The American Political Science Review

Vol. VII NOVEMBER 1913 No. 4

ANNULMENT OF LEGISLATION BY THE SUPREME COURT

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The growing strength of the various political movements for limiting judicial authority over constitutional questions has aroused a new interest in the origin of the courts' power. Wherever the source be found, or however the practice may have developed, the authority now exercised by the United States supreme court does not determine the proper function of state courts in local cases, which is now the chief issue; but its study throws some light on the attitude that each of the three departments of government—legislative, executive and judicial—ought to assume toward the subject of constitutional law, and is of particular interest to the many citizens whose opinion of the new proposals will be more or less favorable as they appear to bring us back nearer to original ideals or to carry us farther away.[1] The historical study is interesting also in showing that

[1] Another question indirectly involved, which has received much less attention than it deserves, is, What is the justification for declaring an unconstitutional law void *from the beginning*? To do so is logically plausible, but it is unnecessary and politically it is a most unfortunate doctrine. Its obvious result is to increase the too prevalent disrespect for the law by making every man his own judge of the validity of every new statute. The impossible results of such a doctrine, carried to its logical conclusion in a political emergency, is shown in the case of People vs. Board of Police, 19 N. Y. 188, which arose out of the action of the New York city police in deciding for themselves that a statute reorganizing the department was unconstitutional.

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our forefathers in their discussions by no means adopted the viewpoint of most of the modern writers—of assuming that whenever a law is declared unconstitutional, the court is always right, and is performing a public service in so deciding.

Investigation in this field has already been pursued by several able writers. In 1911[2] appeared several magazine articles, contending on historical grounds that the action of the courts was substantially "usurpation;" while in 1912[3] were published two books, which, on the basis of careful and scholarly research, reached an opposite conclusion. In view of the thoroughness with which the ground has been covered, it may be rash to enter the lists with further argument; yet the interest of the topic justifies the effort to throw more light on it. Several phases of the subject tempt discussion, but for the purposes of a single paper I must confine myself strictly to an attempt to answer the one question—Did our forefathers who adopted the Constitution intend to give the federal supreme court the power conclusively to determine the constitutionality of acts of congress?

In my judgment they did not.

As I reach this conclusion upon much the same evidence as is cited by Professor Beard in his interesting study, it is necessary to define the question with some care, and to point out specifically the differences of opinion between us. In the first place, Professor Beard discusses primarily the attitude of the *makers* of the Constitution (p. 1), while I am concerned primarily with those who *adopted* it. But I am also inclined to question his demonstration of the *intent* of the makers, especially his contention that seventeen of them "*declared*, directly or indirectly, *for judicial control*" (p. 17), and that "twenty-five members of the convention *favored* or at least accepted *some form of judicial control*" (p. 51).

[2] W. Clark, address, *Congressional Record*, July 31, 1911; W. Tricket, "Judicial Dispensation from Congressional Statutes," *American Law Review*, xii, 65; L. B. Boudin, "Government by Judiciary," *Political Science Quarterly*, xxvi, 238; G. Roe, "Our Judicial Oligarchy," *La Follette's Weekly Magazine*, iii, no. 25, p. 7.

[3] C. A. Beard, *The Supreme Court and the Constitution;* A. C. McLaughlin, *The Courts, The Constitution and Parties.*

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If we could discover the intent of the several conventions that ratified the Constitution, we should have a guide to the meaning that historically ought to be attached to it; and if we found that a majority of all the conventions understood the article relating to the judiciary to the same effect, and intended the same significance to be attached to their respective actions—whether ratifying without qualification, or ratifying and at the same time urging amendment, or finally, rejecting—we should have the most cogent argument possible on its proper interpretation. Unfortunately it is impossible to determine the intent of the conventions with any such exactness, partly because there is no known record of the debates in some of them, and partly because the question was not presented in such a way as to get any clear and unequivocal answer.

In trying to discover the intent of our forefathers who adopted the Constitution, I shall begin with the opinions of the members of the constitutional convention, reviewing the ground covered by Professor Beard; I shall then discuss the debates and proceedings of the several ratifying conventions, in the light of contemporary discussion, touching on the ground covered by Professor McLaughlin; and finally I shall analyze the judiciary act of 1789, as a contemporary interpretation by men fresh from the controversy in which most of them had engaged. Beyond that I do not find much significance in either legal or political action. It seems to me that the Virginia and Kentucky resolutions and their reception indicate the politics of the moment, rather than any fixed philosophical views about the method of determining the constitutionality of laws;[4] and that Chief Justice Marshall's opinion in the case of Marbury vs. Madison[5] was a shrewd political manifesto, rather than a logical foundation for the decision of that highly technical case.

A brief summary of my argument will make my position clearer. Conceding that the theory of a judiciary assuming to declare statutes to be unconstitutional and void was in accord with the

[4] Compare the reversal of attitude of many of the States at the time of the Hartford convention of 1814.

[5] 1 Cranch, 137.

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political philosophy of the period, was brought to the attention of the constitution-makers as practicable, and was favored by some of the most influential members of the convention as a deliberate policy—yet the evidence that I have been able to gather persuades me that there was in the convention itself great difference of opinion as to the best policy to be adopted; that the question was intentionally left open; that upon the submission of the Constitution for ratification a vigorous objection to the power of the federal judiciary was expressed, especially in the most important States; that the jealousy of federal power crystallized into the Tenth Amendment, one of the effects of which was intended to be, and logically was, to deprive the federal courts of the power of constitutional review; and that this limitation was recognized and applied in the judiciary act of 1789, *by leaving this power to the States*. If my reading of the evidence is correct, it follows that the people of the original States did not intend to give the federal supreme court the power of annulling acts of congress on the ground of unconstitutionality.

THE INTENT OF THE CONSTITUTIONAL CONVENTION

Accepting Professor Beard's list of twenty-five as representing the active and influential members of the constitutional convention, let us first analyze his division of them into those "who directly or indirectly supported the doctrine of judicial control" and those who did not regard judicial control as "a normal judicial function."

I do not intend to repeat the evidence he has so fully and fairly collated from Farrand, Elliot and other sources; but it will make the argument clearer to reproduce his list, with the names in italics, as printed by him, to indicate the seventeen who, as he concludes, "declared, directly or indirectly, for judicial control." His list is as follows (p. 17):

Blair	Franklin	*King*	*Morris, R.*	Rutledge
Butler	*Gerry*	*Madison*	*Paterson*	Sherman
Dayton	Gorham	*Martin, L.*	Pinckney, Chas.	*Washington*
Dickinson	*Hamilton*	*Mason*	Pinckney, C. C.	*Williamson*
Ellsworth	*Johnson*	*Morris, G.*	*Randolph*	*Wilson*

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For purposes of comparison I repeat the list, leaving in italics those who from first to last *favored* judicial control, putting in small capitals those who *disapproved*, and leaving in lower case the doubtful and non-committal ones. I hasten to add that my list like Professor Beard's is only tentative; and I may express also my doubt of the possibility of ever reaching a final conclusion, not only because the evidence is slight, but also because of the probability that some of those who spoke or wrote on the subject were not altogether clear in their own minds. The course of the debate in which the speaker was engaged and the politics of the moment seem to have influenced not a few remarks on this subject; and it is probable that the views of some of our forefathers were quite unsettled. With these qualifications, and with the further important distinction that it is the final view of each member, as shown upon or immediately after the ratification by his State (between December, 1787, and October, 1789) that I seek to emphasize, not his opinion in the convention, my revision is as follows:

Blair	Franklin	*King*	MORRIS, R.	Rutledge
Butler	*Gerry*	MADISON	PATERSON	Sherman
Dayton	Gorham	MARTIN, L.	PINCKNEY, CHAS.	WASHINGTON
Dickinson	*Hamilton*	*Mason*	Pinckney, C. C.	*Williamson*
ELLSWORTH	JOHNSON	*Morris, G.*	Randolph	*Wilson*

John Dickinson, of Delaware, expressly declared himself in the convention as opposed to the "power of the judges to set aside the law," but "at a loss what expedient to substitute;" nevertheless he is included by Professor Beard as one of the seventeen because of an argument in favor of the ratification of the Constitution, written in 1788, in which he accepts the theory of judicial review.[6] But in the same paper Dickinson adds:[7] "Constitutional properties are only, as has been observed at the beginning of this letter, parts in the organization of the contributed rights. As long as those parts preserve the orders assigned to them re-

[6] "The president and the federal independent judges, so much concerned in the execution of the laws and in the determination of their constitutionality." Ford's *Pamphlets*, 184.

[7] Ford's *Pamphlets*, 183.

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spectively by the constitution, they may so far be said to be balanced; but, when one part, without being sufficiently checked by the rest, abuses its power to the manifest danger of public happiness, or when the several parts abuse their respective power so as to involve the commonwealth in like peril, *the people* must restore things to that order from which their functionaries have departed" (italics in original).

In another paper in the same series he inquires:[8]

"What bodies are there in Britain, vested with such capacities for inquiring into, checking and regulating the conduct of national affairs, as our sovereign states?"

It would seem from these remarks that while Dickinson appreciated the possibility of judicial review, he contemplated also direct action by the people and intervention by the States. Whether he at any time *approved* of the court's exercise of the function of annulling legislation seems to me more than doubtful in view of his original objection; but neither am I convinced that he *disapproved*. I class him, therefore, as doubtful.

Oliver Ellsworth, of Connecticut, did not express himself in the federal convention, but in the State convention in January, 1788, he clearly and tersely voiced the doctrine of judicial control as an argument in favor of the Constitution.[9] This, it will be observed, was before the debates in Massachusetts, the Carolinas, Virginia and New York had disclosed the strength of the anti-federalist sentiment. In March, 1789, Ellsworth took his seat in congress as senator from Connecticut, and was at once appointed chairman of the judiciary committee. He had framed the judiciary bill himself and was active both in committee and on the floor of the senate, as appears from Senator Maclay's Journal, in preserving it in a form satisfactory to himself. As sponsor for the bill from its introduction to its final passage, he is fully committed to its principle of reserving the judicial review

[8] Ford's *Pamphlets*, 212.

[9] "If the general legislature should at any time overlap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void." Elliot's *Debates*, ii, 196.

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of legislation to the state courts; and I, therefore, class him as *disapproving* federal judicial control.

Elbridge Gerry, of Massachusetts, seems on the whole to have accepted the theory of judicial review. His speeches in the federal convention in 1787 and in the house of representatives in 1789 are quoted fully by Professor Beard, and need not be repeated. Nevertheless it is worthy of comment that he refused to sign the Constitution, assigning as one of his reasons:[10] "My principal objections to the plan are . . . . . that the judicial department will be oppressive."

He campaigned actively against the ratification of the Constitution, publishing in 1788 "Observations on the New Constitution; By a Columbian Patriot," in which he expressed his dread of the judiciary more fully as follows:[11]

"But I leave the field of general censure on the secrecy of its birth, the rapidity of its growth, and the fatal consequences of suffering it to live to the age of maturity, and will particularize some of the most weighty objections to its passing through this continent in a gigantic size . . . .

"3. There are no well defined limits of the Judiciary Powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver, '*thus far shalt thou go and no further*,' and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete."

If he was sincere in this argument, it is difficult to believe that he *approved* of giving to the supreme court the highest power imaginable—that of annulling an act of congress;—yet his speeches the following year on the President's power of removal show none of the apprehension he expressed during the struggle for ratification.[12]

James Madison, of Virginia. Madison's views are discussed so fully and with such liberal quotations by Professor Beard

[10] Elliot's *Debates*, i, 493.

[11] Ford's *Pamphlets*, 8.

[12] "The judges who are bound by oath to support the Constitution, declare against this law." Elliot's *Debates*, iv. 393.

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that I have nothing new to add. I can only say that the extracts he gives are convincing to my mind that Madison strongly disapproved the theory that the federal judges should have power conclusively to determine the constitutionality of acts of congress. I may mention particularly the following:[13]

"In the state constitutions and indeed in the federal one also, no provision is made for the case of a disagreement in expounding them [the laws], and as the courts are generally the last making the decision, it results to them, by refusing or not refusing to execute a law, to stamp it with its final character. This makes the judiciary department paramount in fact to the legislature, which was never intended and can never be proper."

Madison's earnest and repeated efforts to provide for a council of revision seem to me to show a consistent desire to avoid leaving to the court any question of annullment of legislation. He also took the lead in the house of representatives in 1789 in securing the passage of the first ten amendments, which, as I argue, remove from the supreme court to the States the authority to annul acts of congress.

Luther Martin, of Maryland, refused to sign the Constitution and fought actively against its ratification. He delivered to the legislature of Maryland, November 29, 1787, an address[14] which was one of the most complete and able arguments made by any of the anti-federalists. He argues, *as a reason for rejecting the Constitution:*

"Whether, therefore, any laws or regulations of the congress, or any acts of its President or other officers, are contrary to or not warranted by the Constitution, rests only with the judges, who are appointed by Congress, to determine; by whose determination every State must be bound."

His view is indicated more fully in his "Reply to the Landholder," dated March 19, 1788,[15] where he describes his effort in the federal convention to have all questions of the constitutionality of laws decided by the state courts.

[13] *Writings*, v, 293.
[14] Farrand's *Reports*, iii, 172, 220.
[15] Farrand's *Reports*, iii, 287.

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"When this clause ["that the legislative acts of the United States . . . . shall be the supreme law of the respective States . . . . anything in the respective laws of the individual States to the contrary notwithstanding"] was introduced, it was not established that inferior continental courts should be appointed for trial of all questions arising on treaties and on the laws of the general government, and it was my wish and hope that every question of that kind would have been determined in the first instance in the courts of the respective states; had this been the case, the propriety and necessity that treaties duly ratified, and the laws of the general government, should be binding on the state judiciaries, *which were to decide upon them*, must be evident to every capacity, while at the same time, if such treaties or laws were inconsistent with our constitution and bill of rights, the judiciaries of this state would be bound to reject the first and abide by the last, since in the form I introduced the clause, notwithstanding treaties and the laws of the general government were intended to be superior to the laws of our State government, where they should be opposed to each other, yet that they were not proposed nor meant to be superior to our constitution and bill of rights."

This scheme of Martin's would have made the state constitutions superior to the federal laws, and it is the clash between the two that he is discussing; but his proposal, especially in the absence of inferior federal courts, would have left questions of the validity of federal laws, under the federal constitution also, to the determination of state courts, as appears from the words I have italicized.

George Mason, of Virginia, is counted as favoring judicial control because of a speech in the Virginia convention in June, 1788, in which he said:

"When this matter comes before the federal judiciary, they must determine according to this constitution. . . . . As an express power is given to the federal court to take cognizance of such controversies, and to declare null all *ex post facto* laws, I think gentlemen must see there is danger, and that it ought to be guarded against."[16]

[16] Elliot's *Debates*, iii, p. 479.

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Mason, like Gerry, refused to sign the Constitution and argued vigorously against its ratification. In fact, the speech above quoted was delivered not in favor of the Constitution, but in opposition to it. With the exception of these remarks, his whole attitude seems adverse to vesting such power in the judiciary. In the constitutional convention he favored Madison's plan for a council of revision; in October, 1787, he wrote Washington[17] objecting to the prohibition against *ex post facto* laws because "there never was, nor can be, a legislature, but must and will make such laws, when necessity and the public safety require them, which will hereafter be a breach of all the constitutions in the union, and *afford precedents for other innovations*"—evidently not then relying on the courts to check such legislation; and he is credited with the authorship of the Virginia amendments intended to limit the power of the federal judiciary.[18]

His approval of the theory of judicial control seems on the whole to rest on a slender foundation.

William Paterson, of New Jersey. On the strength of a charge to the jury in 1795 delivered by Paterson as circuit judge in the case of Van Horne's Lessee vs. Dorrance, 2 Dallas, 304, he is listed by Professor Beard among the seventeen. The remarks quoted are broad enough to justify this classification, but they lose their significance when the circumstances of the case are considered. That case was brought in the federal court, apparently as a controversy between citizens of different States, and the question was whether a statute of Pennsylvania was valid under the Pennsylvania constitution. Neither the Constitution of the United States nor any act of congress was relied on by either party; nor did it appear that the Pennsylvania statute had ever been construed by the State court. Hence there can be no positive inference that Paterson believed that the federal supreme court should have the power conclusively to determine the constitutionality of acts of congress.

On the other hand he was in 1789 a member of the senate committee which framed the judiciary bill, and as senator from New

[17] Ford's *Pamphlets*, 331.

[18] K. M. Rowland, *Life of George Mason*, ii, chap. 8.

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Jersey he voted for it. If, as I shall endeavor to show, this statute placed the authority to annul unconstitutional federal statutes exclusively in the States, then Paterson must be counted as disapproving the excercise of that power by the federal courts.

Charles Pinckney, of South Carolina. Charles Pinckney did not express himself in the federal convention, but in 1799 he wrote:[19]

"On no subject am I more convinced, that that it is an unsafe and dangerous doctrine in a republic, ever to suppose that a judge ought to possess the right of questioning or deciding upon the constitutionality of treaties, laws, or any act of the legislature. It is placing the opinion of an individual, or of two or three, above that of both branches of congress, a doctrine which is not warranted by the constitution, and will not, I hope, long have any advocates in this country."

Edmund Randolph, of Virginia, refused to sign the Constitution. He set forth his reasons in a long letter to the speaker of the house of delegates, in which he writes:[20]

"I should now conclude this letter, which is already too long, were it not incumbent on me, from having contended for amendments, to set forth the particulars, which I conceive to require correction. . . . . 8. In limiting and defining the judicial power."

As a member of the Virginia convention, he argued:[21]

"Can congress go beyond the bounds prescribed in the Constitution? Has congress a power to say that she [Virginia] shall pay fifteen parts out of sixty-five parts [of a direct tax]? Were they to assume such a power it would be a usurpation so glaring, that rebellion would be the immediate consequence."

By December, 1790, however, he seems to have lost his dread of the federal judiciary. At that date he reported to Congress a criticism of the judiciary act of 1789 and a draft statute which would have immensely increased the jurisdiction of the federal courts. An analysis of the proposed law would be too long and

[19] Wharton's *State Trials*, 412.
[20] Ford's *Pamphlets*, 274.
[21] Elliot's *Debates*, iii, 121.

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too technical for this paper, but it appears to authorize both the circuit courts and the supreme court to review the decisions of state courts on any federal question; and it is significant that it provides that both district and circuit courts "shall have original jurisdiction in all cases of law and equity arising under the Constitution of the United States, the laws of the United States, and treaties." In commenting on the proposed statute, Randolph recognizes the right of state courts to invalidate acts of congress as unconstitutional, though even in a rather lengthy discussion of the subject he does not hint that federal courts have such right. His argument, however, is based on the contingency of the statute being actually constitutional and the decision of the state court merely "refractory,"[22] and does not preclude the theory of federal judicial review.

If this report and his failure to argue in the Heyburn case,[23] in 1792, that the judges had no power to declare the law unconstitutional, indicate a change of heart because he had been appointed attorney-general and was anxious for an extension of power of the machine of which he had become part, then his opinion ought to be cited from the earlier date; but on the evidence before me, that fact must remain a matter of surmise, and therefore, I classify him as doubtful.

William Johnson, of Connecticut, Robert Morris, of Pennsylvania, and George Washington. For precisely the reason that Professor Beard concludes that these three members "understood and indorsed the doctrine" of judicial review, I infer that while they may well have understood it, they not only did not indorse it, but actually disapproved it. The only evidence is the support of the judiciary act of 1789 by Johnson and Morris with their votes in the Senate and by Washington with his signature as President.

John Blair, of Virginia, Alexander Hamilton, of New York, Rufus King, of Massachusetts, Gouverneur Morris, of Pennsylvania, Hugh Williamson, of North Carolina, and James Wilson, of Pennsylvania, committed themselves to approval of judicial

[22] American State Papers, Misc. I, 23.
[23] 2 Dallas, 409.

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control.[24] Gerry should be included with this group on the basis of his more frequent and more specific utterances, and Mason may be added for similar reasons.

Taking now the preliminary census of the attitude of the twenty-five active and influential members of the constitutional convention, as shown from 1787 to 1789, we find: *Favoring* judicial control by the supreme court, Blair, Gerry, Hamilton, King, Mason, G. Morris, Williamson and Wilson, 8; *disapproving* of such control, Ellsworth, Johnson, Madison, L. Martin, R. Morris, Paterson, Chas. Pinckney and Washington, 8; *doubtful or non-committal*, Butler, Dayton, Dickinson, Franklin, Gorham, C. C. Pinckney, Randolph, Rutledge and Sherman,[25] 9.

Turning to the less important members, my view of the judiciary act of 1789 leads me to suggest further changes in Professor Beard's grouping.

William Few, of Georgia, George Read, of Delaware, and Caleb Strong, of Massachusetts, all voted for the statute; in addition, Few and Strong were members of the judiciary committee of the Senate, which introduced and supported the bill. Their action in so doing places them, for reasons just stated, in the list of those who disapproved federal judicial review. It may also be remarked that Strong failed to sign the Constitution.

[24] Blair, 1782: "The court had power to declare any resolution or act of the legislature or of either branch of it, to be unconstitutional and void."

Hamilton, 1788: "The courts of justice whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void."

King, 1787: "The judicial ought not to join in the negative of a law because the judges will have the expounding of those laws when they come before them; and they will no doubt stop the operation of such as shall appear repugnant to the Constitution."

G. Morris, 1787: "He could not agree that the judiciary, which was a part of the executive, should be bound to say that a direct violation of the Constitution was law."

Williamson, 1787: "Such a prohibitory clause is in the constitution of North Carolina, and, though it has been violated, it has done good there and may do good here, because the judges can take hold of it."

Wilson, 1788: "If a law should be made inconsistent with those powers vested by this instrument in Congress, the judges . . . . will declare such law to be null and void."

[25] A quotation from Sherman's "Countryman" letters, printed on p. 565 indicates that he did not rely on judicial control.

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Richard Bassett, of Delaware, was also a member of the Senate judiciary committee and voted for the statute, thus indicating in 1789 his disapproval of federal judicial review. His memorial to congress in 1802, suggesting that his right to compensation as a judge appointed under the act of February 13, 1801, (repealed March 8, 1802) be submitted to judicial decision, is cited as evidence of the contrary attitude thirteen years later. But is it? Is there not a suggestion of shrewd personal politics in the attempt to have the Republican legislation subjected in some extra-judicial proceeding to the examination and decision of the Federalist bench? And in any case, is not Bassett's proposal evidence rather of a continued *disapproval* of federal judicial review? His suggestion is that the act of 1802 is unconstitutional and that *congress* take steps to have it so declared. That is the very opposite of judicial control; it is decision by the legislature itself through machinery of its own invention. Any decision by the judiciary was to be merely on the invitation of the legislature. If Bassett believed that the judiciary independently had the conclusive determination, why did he not get his question into court in a legally initiated action or proceeding, as he might have done in a dozen different ways?

Robert Yates, of New York, withdrew from the federal convention, and argued and voted against the Constitution when it came up for ratification. His views on judicial control are fully and ably expressed in the "Brutus" letters, referred to again below. That he regarded it as a logical but altogether undesirable deduction, appears from the whole tenor of his argument, summed up in Letter XV[26] as follows:

"I said in my last number, that the supreme court under this constitution would be exalted above all other powers in the government, and subject to no control. The business of this paper will be to illustrate this, and to shew the danger that will result from it. . . . .

"There is no control above them that can correct their errors or control their decisions. . . . . "

George Wythe, of Virginia, Pierce Butler, of South Carolina,

[26] *New York Journal and Weekly Register*, xlii, no. 24, March 20, 1788.

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and John Langdon, of New Hampshire. The evidence as to all three of these members seems to me too slight to justify their classification. Wythe did not sign the Constitution; and in the Virginia convention he was chairman of a committee on amendments, which reported a set of proposals for the limitation of the federal judiciary to a supreme court, with little except appellate jurisdiction, and inferior courts of *admiralty only*. His opinion six years earlier in a case involving only a state law must be considered in the light of his action on the Constitution itself. As to Butler and Langdon, they may have had a score of reasons for voting against the judiciary act; I do not feel that such action is indicative of a view either in favor of or against judicial control.

As to William Livingston, of New Jersey, also, the evidence is very meagre. Professor Beard infers that from his connection with the early and unreported case of Holmes vs. Walton, deciding a New Jersey statute to be unconstitutional and void (1780), he shows an understanding and approval of the doctrine of judicial review; and Mr. Austin Scott, discussing that case in the *American Historical Review*,[27] writes that "Livingston, as governor . . . . . had shared in the legislative acquiescence in the decision of the court." In fact the only "acquiescence," was the passage of another act on the same subject, in 1779, *before* the court had made its decision. The act of 1779 was, however, framed to meet the arguments made on constitutional grounds, and perhaps gives color enough to Mr. Scott's conclusion to justify the classification of Livingston among those who approved of judicial control, in the absence of evidence to the contrary.

Abraham Baldwin, of Georgia, and David Brearly, of New Jersey, also appear to have favored judicial control. The evidence is a quotation from Baldwin,[28] and Brearly's participation as chief justice in the decision of Holmes vs. Walton.

Gunning Bedford, of Delaware, John F. Mercer, of Maryland,

[27] iv, 468.

[28] "It is their [the Judiciary's] province to decide upon our laws and if they find this clause to be unconstitutional, they will not hesitate to declare it so."

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and Richard Spaight, of North Carolina,[29] showed by their speeches that they were opposed to judicial control.

The final count thus adds to those *in favor of* judicial control the names of Baldwin, Brearly and Livingston, 3, making a total of 11; to those *against* judicial control it adds Bassett, Bedford, Few, Mercer, Read, Spaight, Strong and Yates, 8, making a total of 16; and to the *doubtful* it adds Butler, Langdon and Wythe, 3, making a total of 12. If we add to the third group the names of those who signed the Constitution but have not been mentioned thus far in the discussion, we shall fairly have disposed, as best we can, of all members of the convention entitled to consideration in ascertaining the opinions of the framers. This silent and not particularly influential group is as follows: William Blount, of North Carolina; Jacob Broom, of Delaware; Daniel Carroll, of Maryland; George Clymer and Thomas Fitzsimons, of Pennsylvania; Nicholas Gilman, of New Hampshire; Jared Ingersoll, of Pennsylvania; Daniel S. Jenifer and James McHenry, of Maryland; and Thomas Mifflin, of Pennsylvania, 10; making the total for the *doubtful and non-committal* members, 22.

This uncertain and tentative grouping shows 11 for and 16 against judicial control out of 48 members who either signed the Constitution or took a fairly active part in its making—a reasonably even division of opinion when we consider the meagreness of the evidence on which we are obliged to rely. It accounts for the very illuminating letter written by Gouverneur Morris, the draftsman of the final version of the Constitution, in 1814, in which he says:[30] (italics mine):

"My dear Sir:—What can a history of the Constitution avail towards interpreting its provisions? This must be done by comparing the plain import of the words with the general tenor and object of the instrument. That instrument was written by the

[29] Bedford, 1787: "The representatives of the people . . . . ought to be under no external control whatever."

Mercer, 1787: "He disapproved of the doctrine that the judges as expositors of the Constitution should have authority to declare a law void."

Spaight, 1787: "It is immaterial what law they [the judges] have declared void; it is their usurpation of the authority to do it that I complain of."

[30] Elliot's *Debates*, i, 506.

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fingers which write this letter. Having rejected redundant and equivocal terms, I believed it to be as clear as our language would permit; excepting, nevertheless, a part of what relates to the judiciary. On that subject, *conflicting opinions had been maintained with so much professional astuteness*, that it became necessary to select phrases which, expressing my own notions, would not alarm others nor shock their self-love; and to the best of my recollection, this was the only part that passed without cavil."

It would be difficult to understand Morris's allusion to "conflicting opinions," if on the important subject of judicial review of legislation the members had been practically unanimous—twenty-five (including all the active ones who expressed themselves) against five (according to Professor Beard's final list—or three, if we exclude Butler and Langdon); but with such an even split in opinion as is indicated by my list, it is easy to understand that tact and skill in selecting phrases became indispensable.

Is it not the legitimate inference that the power of judicial control was neither overlooked, nor attempted to be slipped in by indirect or ambiguous phrases, but that it was intentionally omitted?[31]

THE INTENT OF THE RATIFYING CONVENTIONS

To get a correct perspective for interpreting the action of the people in ratifying the Constitution, we must keep in mind a few familiar facts of political history.

In 1787 the thirteen original States, having achieved their independence, were banded together in a loose confederation. Although the articles of confederation had proved totally inadequate to provide an efficient central government, the Philadelphia convention was organized merely to *revise* those articles, and the authority of some of its members was in terms limited to such action.[32] The people as a whole were by no means prepared for the creation of a vigorous central government. Apart from

[31] J. B. Thayer's *John Marshall*, 65.
[32] Elliot's *Debates*, i, 126.

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local pride and mutual jealousy, questions of unequal practical advantage made the favorable reception of the new plan a matter of the greatest uncertainty. The smaller states could be counted upon to support a centralized government which would remove restrictions on interstate trade; but the powerful states of Virginia, Massachusetts, Pennsylvania and New York were offered less obvious advantages, and yet without the support of all of them the new Union could hardly be expected to be a success. Moreover the Constitution was offered for ratification, to be accepted or rejected as a whole; and there was little occasion for academic discussion of detail. The big question was whether "the grinding necessity" of the political situation was stern enough to extort a consent from a reluctant people.[33]

The chief topic of debate was almost of necessity the question of state sovereignty. What powers of government were the States surrendering, and what were they retaining? The first three words of the preamble—"We the people"—provoked as much discussion as any whole article in the Constitution itself; and in one form or another the argument over that phrase continued until it was settled by the Civil War. The absence of any bill of rights in favor of either the people or the States caused a storm of criticism which was met only by a general understanding that the principles involved would be incorporated promptly into the Constitution by amendment.

Other questions which were fully argued were the basis of representation in the house of representatives, the frequency of elections, the power of taxation and especially the right to levy direct taxes, the control over federal elections, the method of impeachment, the making of treaties, the power of the executive, the creation of a federal judiciary, the separation or confusion of function among the three branches of government, the debt of the confederation and slavery—some of them matters which have proved to be of little importance, but others going to the foundation of our system of government. Much alarm was caused by the vague language of the Constitution, which, it was

[33] Von Holst, *Constitutional History*, i, 63.

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argued, would permit the central government to absorb all the functions of the state governments. With these questions at issue, the method of testing and checking violations of the instrument itself could hardly rank higher than a secondary topic. When it was broached, it was often discussed in the most general terms. The same factors were often spoken of as checks upon the abuse of *any* authority, whether legislative or executive, namely, frequent elections, impeachment and amendment of the Constitution.

Viewed in this broad aspect, it would be surprising to find any clear expression of popular opinion on a single technical issue not presented by any language in the document under consideration. Nevertheless the issue was not wholly overlooked, and if all the debates had been preserved in full, it is probable that we should find considerable argument on the subject. Without pretending to have made an exhaustive search, I submit what I have been able to gather, arranging the material by States in the order of their ratification.

Delaware ratified the Constitution December 6, 1787, by a unanimous vote and without debate.

Pennsylvania followed December 12, 1787, after three weeks of animated debate, by a vote of 46 to 23. The speeches of the Federalists led by James Wilson and Thomas McKean have been preserved, and there can be no doubt that the principle of judicial control was fully expounded by them and was accepted by the convention. On November 24, McKean presented the theory distinctly in a speech summarized by Wilson as follows:[34]

"In order to secure Liberty and the Constitution, it is absolutely necessary that the legislature should be restrained.

"It may be restrained in several ways:

"1. By the judges deciding agst the legislature in favor of the Constn."

The anti-federalists were led by John Smilie, Robert Whitehill and William Findley. On the 28th of November, Smilie and Whitehill both discussed the question, Smilie beginning with the following remarks:[35]

[34] McMaster and Stone, *Pennsylvania and the Federal Constitution*, 766.

[35] Same, 255, 259, 269.

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"So loosely, so inaccurately are the powers which are enumerated in this Constitution defined, that it will be impossible, without a test of that kind [bill of rights], to ascertain the limits of authority, and to declare when government has degenerated into oppression. In that event the contest will be between the people and the rulers: 'You have exceeded the powers of your office, you have oppressed us,' will be the language of the suffering citizen. The answer of the government will be short—'We have not exceeded our power; you have no test by which you can prove it.' Hence, Sir, it will be impracticable to stop the progress of tyranny, for there will be no check but the people, and their exertions must be futile and uncertain."

Whitehill said:

"Besides the powers enumerated, we find in this Constitution an authority is given to make all laws that are necessary to carry it effectually into operation, and what laws are necessary is a consideration left for congress to decide."

And Smilie continued:

"Those very men who raise and appropriate the taxes are the only judges of what shall be deemed the general welfare and common defence of the national government."

Wilson argued the point elaborately on December 1, and referred to it again answering unreported speeches of Smilie and Whitehill on December 4 and 7. In the first of these addresses he said:[36]

"It is therefore proper to have efficient restraints upon the legislative body. These restraints arise from different sources. I will mention some of them. In this Constitution they will be produced, in a very considerable degree, by a *division of the power* in the legislative body itself. Under this system, they may arise likewise from the interference of those officers who will be introduced into the executive and judicial departments. They may spring also from another source—the election by the people; and finally, under this Constitution, they may proceed from the great and last resort—from the *people* themselves. I say, under this Constitution, the legislature may be restrained, and kept

[36] Same, 445, 478, 489.

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within its prescribed bounds, by the interposition of the judicial department. This I hope, sir, to explain clearly and satisfactorily. I had occasion, on a former day, to state that the power of the Constitution was paramount to the power of the legislature acting under that Constitution; for it is possible that the legislature, when acting in that capacity, may transgress the bounds assigned to it, and an act may pass, in the usual mode, notwithstanding that transgression; but when it comes to be discussed before the *judges*,—when they consider its principles, and find it to be incompatible with the superior power of the Constitution,—it is their duty to pronounce it *void*; and judges independent, and not obliged to look to every session for a continuance of their salaries, will behave with intrepidity, and refuse to the act the sanction of judicial authority. In the same manner, the President of the United States could shield himself, and refuse to carry into effect an act that *violates* the Constitution."

It is unfortunate that the speeches of the anti-federalists during the latter part of the convention were suppressed; but the foregoing extracts are sufficient to show that the doctrine was clearly presented to the convention, and that it was approved by the Federalists, but neither accepted nor approved by the anti-federalists.

Immediately upon the close of the convention, twenty-one of the twenty-three anti-federalists joined in an Address and Reasons of Dissent, in which they argue:[37]

"The supremacy of the laws of the United States is established by article sixth, viz., ... [Quoting from the Constitution]. It has been alleged that the words 'pursuant to the Constitution' are a restriction upon the authority of Congress; but when it is considered that by other sections they are invested with every efficient power of government, and which may be exercised to the absolute destruction of the State governments, without any violation of even the forms of the Constitution, this seeming restriction, as well as every other restriction in it, appears to us to be nugatory and delusive; and only introduced as a blind upon the real nature of the government. In our opinion,

[37] Same, 562.

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'pursuant to the Constitution' will be co-extensive with the *will* and *pleasure* of Congress, which, indeed, will be the only limitation of their powers."

By midsummer of 1788 eleven States had ratified the Constitution and the Union was an established fact. The anti-federalists of Pennsylvania continued their activities during the interval, but gradually changed their method of attack, agitating not for rejection, but for amendment. On September 3 they assembled thirty-three delegates at Harrisburg and adopted resolutions urging twelve amendments, of which the first and tenth are especially significant:

"I. That congress shall not exercise any powers whatsoever, but such as are expressly given to that body by the Constitution of the United States; nor shall any authority, power or jurisdiction, be assumed or exercised by the executive or judiciary departments of the union under color or pretense of construction or fiction. But all the rights of sovereignty which are not by the said Constitution expressly and plainly vested in the congress, shall be deemed to remain with, and shall be exercised, by the several States in the union according to their respective constitutions.

"X. That congress establish no court other than the supreme court, except such as shall be necessary for determining causes of admiralty jurisdiction."

During this entire period the newpapers had been full of letters for and against the Constitution. Pamphlets were also published by individual writers. Among the first of the pamphleteers appeared Peletiah Webster, who printed "Weakness of Brutus Exposed," November, 1787, in support of the Constitution, arguing:[38]

"5. Brutus all along sounds his objections, and fears, on extreme cases of abuse or misapplication of supreme power, which may possibly happen, under the administration of a wild, weak, or wicked congress; but 'tis easy to observe that all institutions are liable to extremes, but ought not to be judged by them; they do not often appear, and perhaps never may; but if they should

[38] Ford's *Documents*, 126.

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happen in the cases supposed, (which God forbid) there is a remedy pointed out in the Constitution itself.

" 'Tis not supposable that such abuses could arise to any ruinous height, before they would affect the States so much, that at least two-thirds of them would unite in pursuing a remedy in the mode prescribed by the Constitution, which will always be liable to amendment, whenever any mischiefs or abuses appear in the government, which the Constitution in its present state, can't reach and correct."

One of the ablest anti-federal publicists was "Centinel," whose identity has never been disclosed. His letters were printed in the *Independent Gazetteer* from October 5, 1787, to November 24, 1788. In Letter VIII, published December 29, 1787, he writes:[39]

"The authors of the present conspiracy are attempting to seize upon absolute power at one grasp. . . . . They have even exposed some of their batteries prematurely, for the unlimited power of taxation would alone have been amply sufficient for every purpose; . . . . therefore there was no use in portraying the ultimate object by superadding the form to reality of supremacy in the following clause, viz.: That which empowers the new congress to make all laws that may be necessary and proper for carrying into execution any of their powers, by virtue of which every possible law will be constitutional, as they are to be the sole judges of the propriety of such laws."

His Letter XVI, published February 23, 1788, is a curious and rather hysterical document, arguing that the constitutional prohibition against *ex post facto* laws would prevent the new government from calling public defaulters to account. He proceeds:[40]

"It may be said that the new congress would rather break through the Constitution than suffer the public to be defrauded of so much treasure, ... but this is not to be expected. . . . . Besides, should congress be disposed to violate the fundamental articles of the Constitution for the sake of public justice, ... still it would be of no avail, as there is a further barrier interposed between the public and these default-

[39] McMaster and Stone, 623.

[40] Same, 659.

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ers, namely, the supreme court of the union, whose province it would be to determine the constitutionality of any law that may be controverted; and supposing no bribery or corrupt influence practiced on the bench of judges, it would be their sworn duty to refuse their sanction to laws made in the face and contrary to the letter and spirit of the Constitution, as any law to compel the settlement of accounts and payment of moneys depending and due under the old confederation would be. The 1st section of the 3d article gives the supreme court cognizance of not only the laws, but of all cases arising under the Constitution, which empowers this tribunal to decide upon the construction of the constitution itself in the last resort. This is so extraordinary, so unprecedented an authority, that the intention in vesting of it must have been to put it out of the power of congress, even by breaking through the constitution, to compel these defaulters to restore the public treasure."

This letter is directed *against* the Constitution; so that while "Centinel" may have been educated out of his earlier view, perhaps by a study of Wilson's speeches, he does not appear to regard judicial control as a desirable feature.

New Jersey ratified December 18, 1787, and Georgia followed January 2, 1788, both unanimously.

Connecticut fell into line a week later by the decisive vote of 128 to 40. The question of judicial control was briefly mentioned in the convention. Not much has been preserved of the Connecticut debates, but the speech by Ellsworth above quoted covers the issue clearly.

The more popular view was presented in the newspapers. The New Haven *Gazette* of November 8, 1787, published a letter by "An American Citizen," (dated Philadelphia, September 29, and doubtless circulated in Pennsylvania also) containing the following:

"In pursuing the consideration of the new federal Constitution, it remains now to examine the nature and powers of the house of representatives, the immediate delegates of the people. . . . .

"They alone can originate bills for drawing forth the revenues

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of the union, and they will have a negative upon every legislative act of the other branch. So far, in short, as the sphere of federal jurisdiction extends, they will be controulable only by the people, and in contentions with the other branch, so far as they shall be right, they must ever finally prevail."

Another Pennsylvania author, identified as Noah Webster, was quoted in the issue of November 29, 1787:

"The idea that congress can levy taxes at pleasure is false, and the suggestion wholly unsupported. The preamble to the Constitution is declaratory of the purposes of our union; and the assumption of any powers not necessary to establish justice, insure domestic tranquility, provide for the common defence; promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity, will be unconstitutional and endanger the existence of congress."[41]

The issue of November 22, 1787, contains the following, by "A Countryman," identified by Mr. Paul Leicester Ford as Roger Sherman:[42]

"On examining the new proposed Constitution, there can not be a question, but that there is authority enough lodged in the proposed federal congress, if abused, to do the greatest injury. . . . .

"But if the members of congress are to be interested just as you and I are, and just as the members of our present legislatures are interested, we shall be just as safe, with even supreme power, (if that were granted) in congress, as in the general assembly. If the members of congress can take no improper step which will not affect them as much as it does us, we need not apprehend that they will usurp authorities not given them to injure that society of which they are a part."

Massachusetts. When the question of ratification came to an issue in Massachusetts, in January and February, 1788, the

[41] The original is reproduced in Ford's *Pamphlets*, 25. Webster adds a footnote: "Any powers not promotive of these purposes will be unconstitutional;—consequently any appropriations of money to any other purpose will expose the congress to the resentment of the States, and the members to impeachment and the loss of their seats."

[42] P. L. Ford's *Essays on the Constitution*, 211.

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easy part of the federalists' work was over. With the exception of Maryland, they could hope for no more one-sided victories. South Carolina was promising; but Rhode Island was hopeless, North Carolina was hostile, and New Hampshire had elected a convention with a majority instructed against ratification. Even with the adherence of Maryland and South Carolina, therefore, the ratifying States would number only seven and would include but one of the large and powerful States. The real struggle began in Massachusetts and was continued in Virginia and New York, for without the support of all three of these States a central government, if created at all, would have but a doubtful chance of success. The action of these three States is, therefore, of special interest.

The question of restraining unconstitutional action by congress was first discussed in the Massachusetts convention by James Bowdoin, of Boston, who argued that usurpation would be prevented by the following checks:[43]

(1) Election by the people; (2) the oath taken by federal officers; (3) impeachment; (4) ineligibility for other office during their term; (5) prohibition of titles of nobility; (6) guarantee of a republican form of government; (7) division of congress into two branches; (8) president's veto; (9) publicity of proceedings; (10) character of men to be elected; (11) the fact that congressmen will themselves be subject to their own laws.

Theophilus Parsons, continuing the discussion, added:[44]

"The Hon. Gentleman from Boston has stated at large most of the checks the people have against usurpation, and the abuse of power [by congress] under the proposed constitution. . . . But there is another check, founded in the nature of the union, superior to all the parchment checks that can be invented. If there should be a usurpation, it will not be upon the farmer and merchant, employed and attentive only to their several occupations, it will be upon thirteen legislatures, completely organized, possessed of the confidence of the people, and having the means, as well as inclination, successfully to oppose it. Under

[43] Elliot's *Debates*, ii, 85.
[44] Same, 93.

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these circumstances, none but mad men would attempt an usurpation. But, sir, the people themselves have it in their power effectually to resist usurpation; without being driven to an appeal to arms. An act of usurpation is not obligatory, it is not law, and any man may be justified in his resistance. Let him be considered as a criminal by the general government, yet only his own fellow citizens can convict him—they are his jury, and if they pronounce him innocent, not all the powers of congress can hurt him."

Samuel Adams took little part in the debate during the first days of the session. Like most of the radicals he was an anti-federalist, and unless he could be persuaded to modfy his opinions and vote for ratification, the Constitution had little chance of being adopted by Massachusetts. His influence was strong enough in the evenly balanced convention to be the decisive factor; and his view may be considered not only representative, but also of the first importance in guiding immediate action in the convention and future action in congress. Toward the close of the session he indicated his intention to support the Constitution, urging at the same time amendments limiting the powers of the general government and defining those of the States. He said:[45]

"Your Excellency's first proposition is, 'that it be explicitly declared, that all powers not expressly delegated to congress are reserved to the several States, to be by them exercised.' This appears, to my mind, to be a summary of a bill of rights, which gentlemen are anxious to obtain. It removes a doubt which many have entertained respecting the matter, and gives assurance that, if any law made by the federal government shall be extended beyond the power granted by the proposed Constitution, and inconsistent with the constitution of this State, it will be an error, and adjudged by the courts of law to be void.

"It is consonant with the second article in the present confederation, that each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States

[45] Same, 131.

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in congress assembled. I have long considered the watchfulness of the people over their rulers the strongest guard against the encroachments of power; and I hope the people of this country will always be thus watchful."

Although Adams does not expressly say *State* courts, the strong inference is that he referred to State courts only and was so understood by the convention. He was discussing not checks and balances in the federal machinery, but limitations to be imposed on the national government in favor of the States; and he mentions this action of "the courts of law" as a primary instance of the exercise of a reserved power by the States.

That his view was adopted by the convention, and that the plan of leaving the control of congressional legislation to the State courts, was endorsed, is further indicated by the course of William Symmes, of Andover. At first Symmes was opposed to the Constitution on the ground that it gave the federal government too much power. Discussing the grant of powers to congress, he said:[46]

"Here, Sir, (however kindly congress may be pleased to deal with us) is a very good and valid conveyance of all the property in the United States—to certain uses, indeed, but those uses capable of any construction the trustees may think proper to make. This body is not amenable to any tribunal, and therefore this congress can do no wrong."

But after the introduction of the amendments and Adams's speech, he declared: "Upon the whole, Mr. President, approving the amendments, and firmly believing that they will be adopted, I recall my former opposition."[47]

Even with the support of Adams and his followers, the vote was close, 187 to 168, but finally on February 6, 1788, the Constitution was ratified. The ratification was in the form of a resolution, declaring that we, the convention, do "ratify the said Constitution for the United States of America. And as it is the opinion of this Convention, that certain amendments and alterations in the said Constitution would . . . . more effect-

[46] Same, 71.
[47] Same, 174.

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ually guard against an undue administration of the federal government, the Convention do therefore recommend . . . .

"I. That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States, to be by them exercised."[48]

In Maryland the federalists knew they had a majority and resolutely declined to debate. The organization of the convention occupied three days, and a day and a half were taken by the anti-federalists to express their opposition, so that ratification was carried on the fifth day, April 26, 1788, by a vote of 63 to 11. An attempt was then made by the minority to get a hearing for various amendments, but the proceedings ran foul of a point of order and the obvious impatience of the delegates, and the convention by a vote of 47 to 27 adjourned without acting on the amendments.[49]

Twelve members, including Luther Martin, published an account of the proceedings, with the proposed amendments, which included:

"1. That congress shall exercise no power but what is expressly delegated by this Constitution.

"6. That the federal courts shall not be entitled to jurisdiction by fictions or collusion."

It appears from the report that both of these proposals had the approval of a considerable number of federalists, but they became entangled in questions of procedure and were never voted on. They were, however, published in the newspapers of various other States.

In electing the delegates who pursued this course, the people of Maryland had before them Luther Martin's letter already quoted, and also a paper by Alexander Contee Hanson, afterwards a member of the convention, who under the name "Aristides" wrote as follows:[50]

"I take the construction of these words [Const., Art. I, Sec. 8, §18] to be precisely the same, as if the clause had preceded

[48] Elliot's *Debates*, i, 322.
[49] Elliot's *Debates*, ii, 549.
[50] Ford's *Pamphlets*, 234.

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(*sic*) further and said, 'No act of congress shall be valid, unless it have relation to the foregoing powers, and be necessary and proper for carrying them into execution.' But say the objectors, 'The congress, being itself to judge of the necessity and propriety, may pass any act, which it may deem expedient, for any other purpose.' The objection applies with equal force to each particular power, defined by the Constitution; and, if there were a bill of rights, congress might be said to be the judge of that also. They may reflect however, that every judge in the union, whether of federal or of state appointment, (and some persons would say every jury) will have a right to reject any act, handed to him as a law, which he may conceive to be repugnant to the Constitution."

In South Carolina the Constitution was read and discussed in the house of representatives before the ratifying convention was summoned. John Julius Pringle, afterwards a member of the convention, addressing the house, said:[51]

"The treaties will affect all the individuals equally of all the States.

"If the President and senate make such as violate the fundamental laws, and subvert the Constitution, or tend to the destruction of the happiness and liberty of the States, the evils, equally oppressing all, will be removed as soon as felt, as those who are oppressed have the power and means of redress. Such treaties, not being made with good faith, and on the broad basis of reciprocal interest and convenience, but by treachery and a betraying of trust, and by exceeding the powers with which the makers were intrusted, ought to be annulled. No nations would keep treaties thus made."

Edward Rutledge, also a member of the convention, spoke on the same subject, as follows:[52]

"But the gentleman had said, that there were points in this new confederation which would endanger the rights of the people—that the President and ten senators may make treaties

[51] Elliot's *Debates*, iv, 269.

[52] *Debates on Adopting the Federal Constitution in the State of South Carolina*, 21.

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. . . . It was true, that the president, with the concurrence of two-thirds of the senate might make treaties, and it was possible that ten senators might constitute the two-thirds, but it was just within the reach of possibility, and a possibility from whence no danger could be apprehended; if the President or the senators abused their trust, they were answerable for their conduct—they were liable to impeachment and punishment."

Charles Pinckney, a member of the constitutional convention, discussing before the state convention the powers of the President, the senate and the house of representatives (but not the judiciary) said:[53]

"With this powerful influence of the purse, they [the house] will always be able to restrain the usurpations of the other departments, while their own licentiousness will, in its turn, be checked and corrected by them."

Ratification was adopted May 23, 1788, by a vote of 149 to 73.

The following resolution was also adopted:

"This convention doth also declare that no section or paragraph of the said Constitution warrants a construction that the States do not retain every power not expressly relinquished by them, and vested in the general government of the Union."[54]

New Hampshire. The New Hampshire convention met early in the year with a majority opposed to ratification or instructed against it. After some discussion the members, by a majority of 3, decided to adjourn till June, in order to find out what action Massachusetts would take. During the interval the debates in the Massachusetts convention were fully reported in the New Hampshire *Gazette*. When the convention reassembled, it voted ratification 57 to 46, and adopted recommendations for amendment virtually identical with those of Massachusetts.

With the vote of New Hampshire, the existence of the United States became a legal fact; but practically the action of Virginia and New York remained almost as important as before.

[53] Same, 71.
[54] Elliot's *Debates*, i, 325.

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Virginia. Mention has already been made of the arguments of Edmund Randolph and George Mason in the Virginia convention. John Marshall voiced the doctrine of judicial control:[55]

"Has the government of the United States power to make laws on every subject? . . . . Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void. . . . To what quarter will you look for protection from an infringement on the Constitution, if you will not give the power to the judiciary? There is no other power that can afford such a protection."

William Grayson, on the other hand, evidently thought that judicial decision would not be final:[56]

"In England they have great courts, which have great and interfering powers. But the controlling power of parliament, which is a *central focus*, corrects them. But here each party is to shift for itself. There is no arbiter or power to correct their interference. Recurrence can be only had to the sword."

Wilson Nicholas argued that the final check would be the ballot:[57]

"The State legislatures, also, will be a powerful check on them: every new power given to congress is taken from the State legislatures; they will be, therefore, very watchful over them; for, should they exercise any power not vested in them, it will be a usurpation of the rights of the different state legislatures, who would sound the alarm to the people."

H. Lee, of Westmoreland, referred to the question in broad terms:[58]

"When a question arises with respect to the legality of any power exercised or assumed by congress, it is plain on the side of the

[55] Elliot's *Debates*, v, 553.
[56] Same, 563.
[57] Same, 18.
[58] Same, 186.

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governed: *Is it enumerated in the Constitution?* If it be, it is legal and just. It is otherwise arbitrary and unconstitutional."

Edmund Pendleton, recognized judicial annulment as having occurred in the State, but did not rely on it:[59]

"My brethren in that department [the judicial] felt great uneasiness in their minds to violate the Constitution by such a law. They have prevented the operation of some unconstitutional acts. Notwithstanding those violations, I rely upon the principles of the government—that it will produce its own reform, by the responsibility resulting from frequent elections."

George Nicholas said:[60]

"Who is to determine the extent of such powers? I say, the same power which, in all well-regulated communities, determines the extent of legislative powers. If they exceed these powers, the judiciary will declare it void, or else the people will have a right to declare it void."

Patrick Henry was the leader of the anti-federalists and was on his feet constantly in opposition to the Constitution. He usually argued on such broad grounds that he did not touch the specific point of judicial control; but his view appears to have been that while the federal courts might on occasion declare an act of congress unconstitutional, the chief reliance of the people ought to be based on the state judiciary. His remarks were as follows:[61]

"Th honorable gentleman did our judiciary honor in saying that they had firmness to counteract the legislature in some cases. Yes, sir, our judges opposed the acts of the legislature. We have this landmark to guide us. They had the fortitude to declare that they were the judiciary, and would oppose unconstitutional acts. Are you sure that your federal judiciary will act thus? . . . . I take it as the highest encomium on this country, that the acts of the legislature, if unconstitutional, are liable to be opposed by the judiciary. . . . .

"I consider the Virginia judiciary as one of the best barriers against strides of power. . . . . So small are the barriers

[59] Same, 299.
[60] Same, 443.
[61] Elliot's *Debates*, iii, 325, 539, 541.

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against the encroachments and usurpations of congress, that, when I see this last barrier—the independency of the judges—impaired [by appointing them federal judges at the same time, as it was suggested might be done for economy], I am persuaded I see the prostration of all our rights. . . . . When congress, by virtue of this sweeping clause, will organize these courts, they cannot depart from the Constitution; and their laws in opposition to the Constitution would be void. If congress, under the specious pretence of pursuing this clause, altered it, and prohibited appeals as to fact, the federal judges, if they spoke the sentiments of independent men, would declare their prohibition nugatory and void."

On June 25, 1788, the convention adopted 89 to 79, a resolution which declared that "the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whenever the same shall be perverted to their injury or oppression, and that every power not granted thereby remains with them and at their will; that, therefore, no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress . . . . . or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes. . . . . With these impressions we, the delegates, ratify the Constitution."[62] They thereupon adopted also a bill of rights containing twenty paragraphs and a series of proposed amendments which included the following:[63]

"14th. That the judicial power of the United States shall be vested in one supreme court, and in such courts of admiralty as congress may from time to time ordain and establish in any of the different States. The judicial power shall extend to all cases in law and equity arising under treaties," &c., including cases between States, cases where the United States or an ambassador is a party, and admiralty cases.

It is noteworthy that this fourteenth amendment did not include cases arising under the laws and Constitution of the United States.

[62] Elliot's *Debates*, i, 327.
[63] Elliot's Debates, iii, 659.

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In Virginia, as in other States, a crop of pamphlets and newspaper articles sprang up, among which was Richard Harry Lee's "Letters of a Federal Farmer." In Letter IV, dated October 12, 1787, arguing against ratification, he writes:[64]

"By the article before recited [Art. VI], treaties also made under the authority of the United States, shall be the supreme law: It is not said that these treaties shall be made in pursuance of the Constitution—nor are there any constitutional bounds set to those who shall make them: The President and two-thirds of the senate will be empowered to make treaties indefinitely, and when these treaties shall be made, they will also abolish all law and State constitutions incompatible with them. This power in the President and senate is absolute, and the judges will be bound to allow full force to whatever rule, article or thing the President and senate shall establish by treaty. . . . ."

The author of these letters was one of the first senators from Virginia and a member of the judiciary committee which framed the act of 1789.

New York. The theory of judicial control was fully expounded by Alexander Hamilton in Number 78 of the *Federalist*, from which a brief quotation has been made above. But in the State convention the question seems never squarely to have arisen, and even Hamilton, though arguing that an unconstitutional law would not be binding, does not indicate by whom the statute would be pronounced unconstitutional.[65] Most of the debate that approached this issue turned on the corruption of congress or oppression through laws within the letter of the Constitution construed as it was supposed that a centralized government might interpret it.[66] It may fairly be inferred, however, from the following speech of Melancthon Smith, one of the anti-federalist leaders, that he considered that congress would interpret the Constitution for itself, and that the federal as well as State courts would be bound to give effect to all federal statutes:[67]

[64] Ford's *Pamphlets*, 312.

[65] F. Childs, *Debates and Proceedings of the Convention of the State of New York*, 113.

[66] See *Speeches of John Lansing, Jr. and John Williams*, same, 75, 91, 96.

[67] Same, 123.

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"Whether then the general government would have a right to control the States in taxation, was a question which depended upon the construction of the Constitution. . . . . No such important point should be left to doubt and construction. The clause should be so formed as to render the business of legislation as simple and plain as possible. It was not to be expected, that the members of the federal legislature would generally be versed in those subtilties, which distinguish the profession of the law. They would not be disposed to make nice distinctions, with respect to jurisdiction. . . . . They would have power to abrogate the laws of the States, and to prevent the operation of their taxes; and all courts, before whom any disputes on these points should come, whether federal or not, would be bound by oath to give judgment according to the laws of the union."

By a vote of 30 to 27 the convention ratified the Constitution July 26, 1788, prefixing to the formal statement of ratification a bill of rights declared to be consistent with the Constitution, and adding a series of amendments which the New York representatives in congress were enjoined to secure. The bill of rights contains the following:[68]

"That every power, jurisdiction, and right, which is not by the said Constitution clearly delegated to the congress of the United States, or the departments of the government thereof, remains to the people of the several States, or to their respective State governments, to whom they may have granted the same. . . . .

"That the jurisdiction of the supreme court of the United States, or of any other court to be instituted by congress, is not in any case to be increased, enlarged, or extended, by any fiction, collusion, or mere suggestion."

And the amendments include:[69]

"That the congress shall not constitute, ordain or establish any tribunals or inferior courts, with any other than appellate jurisdiction, except such as may be necessary for the trial of

[68] Elliot's *Debates*, i, 327.
[69] Same, 331.

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cases of admiralty and maritime jurisdiction, and for the trial of piracies and felonies committed on the high seas; and in all other cases to which the judicial power of the United States extends, and in which the supreme court of the United States has not original jurisdiction, the causes shall be heard, tried, and determined in some of the State courts, with the right of appeal to the supreme court of the United States, or other proper tribunal, to be established for the purpose by the congress, with such exceptions, and under such regulations, as congress shall make."

The New York newspapers published letters arguing all sides of the question. In the *Journal* of January 17, 1788, we find the following by "Countryman:"

"I might have saved myself a world of trouble, in searching to find out the meaning of the new Constitution, if I had only attended a little more closely at first, to that clause which says, the congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States—and the other clause, which gives them power to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this constitution in the government of the United States, or in any department or officer thereof. The first gives them power to do any thing at all, if they only please to say, it is for the common welfare, for they are the only judges of this."

The argument in favor of vesting judicial control in the courts was fully and cogently presented by Alexander Hamilton in the *Federalist* series, while the opposite view was strongly urged by Robert Yates[70] writing as "Brutus." Brief extracts from each writer have already been quoted. The *Federalist* papers are too well known and too readily accessible to justify a more extended reference; but as the Brutus letters have never to my knowledge been reprinted, and as they prophesy with remarkable accuracy the development of judicial power that would result from vesting

[70] Ford's *Essays*, 295.

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in the courts the authority to decide upon the constitutionality of statutes, I add several paragraphs from Letters XI and XV. In the light of current discussion, they might well be reprinted in full.

"XI. This government is a complete system, not only for making, but for executing laws. And the courts of law, which will be constituted by it, are not only to decide upon the Constitution and the laws made in pursuance of it, but by officers subordinate to them, to execute all their decisions. The real effect of this system of government will therefore be brought home to the feelings of the people through the medium of the judicial power. . . . . No errors they may commit can be corrected by any power above them, if any such power there be, nor can they be removed from office for making ever so many erroneous decisions. . . . .

"From these remarks [discussion of Art. 3, §2], the authority and business of the courts of law, under this clause may be understood.

"They will give the sense of every article of the Constitution that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine according to what appears to them the reason and spirit of the Constitution. The opinions of the supreme court, whatever they may be, will have the force of law; because there is no power provided in the Constitution, that can correct their errors or control their jurisdiction. From this court there is no appeal. And I conceive the legislature themselves cannot set aside a judgment of this court, because they are authorized by the Constitution to decide in the last resort. . . . .

"The judicial power will operate to effect in the most certain but silent and imperceptible manner what is evidently the tendency of the Constitution—I mean, an entire subversion of the legislative, executive and judicial powers of the individual States. Every adjudication of the supreme court, on any question that may arise upon the nature and extent of the general government, will affect the limits of the State jurisdiction. In proportion as

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the former enlarge the exercise of their powers, will that of the latter be restricted.

"That the judicial power of the United States will lean strongly in favor of the general government, and will give such an explanation to the Constitution, as will favor an extension of its jurisdiction, is very evident from a variety of considerations."

"XV. The power of this court is in many cases superior to that of the legislature. I have shewed in a former paper that this court will be authorized to decide upon the meaning of the Constitution, and that not only according to the natural and ob- (*sic—obvious*?) meaning of the words, but also according to the spirit and intention of it. In the exercise of this power they will be not subordinate to but above the legislature. . . . . The supreme court then have a right, independent of the legislature, to give a construction to the Constitution and every part of it, and there is no power provided in this system to correct their construction or do away with it. If therefore the legislature pass any laws inconsistent with the sense the judges put upon the Constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature."

Although North Carolina did not ratify until November 21, 1789, after the close of the first session of congress, yet her attitude had its effect upon the political situation. Madison and other leading statesmen were anxious to bring both North Carolina and Rhode Island into the Union as quickly as possible, and kept constantly in mind the effect of both congressional legislation and constitutional amendment upon those states. In the first North Carolina convention several federalists discussed congressional usurpation. John Steele said:[71]

"The judicial power of that government is so well constructed as to be a check. There was no check in the old confederation. Their power was, in principle and theory, transcendent. If the congress make laws inconsistent with the Constitution, independent judges will not uphold them, nor will the people obey them. A universal resistance will ensue."

[71] Elliot's *Debates* iv, 71.

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Archibald Maclaine did not accept judicial control:[72]

"We know now that it is agreed upon by most writers, and men of judgment and reflection, that all power is in the people, and immediately derived from them. . . . . If congress should make a law beyond the powers and the spirit of the Constitution, should we not say to congress, 'You have no authority to make this law. There are limits beyond which you cannot go. You cannot exceed the power prescribed by the Constitution. You are amenable to us for your conduct. This act is unconstitutional. We will disregard it, and punish you for the attempt.'"

James Iredell, quoted by all writers as one of the staunchest champions of judicial control, did not urge it in the convention; he argued that *the people* would restrain congressional usurpation:[73]

"Every individual in the United States will keep his eye watchfully over those who administer the general government, and no usurpation of power will be acquiesced in. The possibility of usurping powers ought not to be objected against it [the Constitution]. Abuse may happen in any government. The only resource against usurpation is the inherent right of the people to prevent its exercise. This is the case in all free governments in the world. The people will resist if the government usurp powers not delegated to it."

This first convention adjourned August 1, 1788, after rejecting the Constitution by a vote of 184 to 84. The ground of disapproval was indicated by a resolution demanding a bill of rights and "amendments to the most ambiguous and exceptionable parts of the said Constitution." The proposed amendments include the following:[74]

"1. That each State in the Union shall respectively retain every power, jurisdiction and right, which is not by this Constitution delegated to the congress of the United States or to the departments of the federal government.

[72] Same, 161.
[73] Same, 185.
[74] Elliot's *Debates*, ii, 244.

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"15. That the judicial power of the United States shall be vested in one supreme court, and in such courts of admiralty as congress may from time to time ordain and establish in any of the different States" &c., limiting the jurisdiction to cases arising under treaties and between certain parties. (This amendment is identical with Virginia's fourteenth.)

Rhode Island took no action whatever until May 29, 1790, when she ratified and at the same time proposed amendments similar to North Carolina's bill of rights and first amendment; but as neither the debate in the convention nor its action could have influenced Congress directly, I will not extend this paper by any quotations. But during the period of inaction by the Rhode Island authorities, the people were discussing the Constitution; and the following qualified approval of judicial control was published by "Solon Junior" in the *Providence Gazette and Country Journal* of August 9, 1788:

"An abundance of proof lies within our own observation, of the prevalence of the spirit of the times over the dead letter of laws and constitutions. During the war, and while that was the rage of the day, was not an act passed for putting every free-man in the State under martial law, to be inflicted by a general over whom even the legislature had no control?—yet the people bore it—and those who complained of its being unconstitutional were answered, that the safety of the people is the highest law. . . . . "

The writer proceeded to discuss the case of Trevett vs. Weeden, in which the State court had held unconstitutional a law limiting trial by jury, and the action of the voters in ousting the judges. "Had that privilege [trial by jury]," he continued, "been ever so safe on paper, and a phrenzy seized the administration similar to that under which this State at a certain time laboured, could not a penal law have passed congress, and been enforced by a federal court—or a federal army—unless, indeed, they should have found the unconquerable spirit of an Adams in that court, to humble the pride of usurped power?"

To sum up this partial survey of the evidences of popular intent, from the adjournment of the constitutional convention to

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the opening of the first congress, I conclude: (1) That the theory of judicial control was sufficiently familiar to be presented to the conventions of most of the States; (2) That the federalists on the whole accepted, but did not strongly urge it; (3) That the anti-federalists either did not accept it or else found in it an argument against ratification; (4) That in no convention was it a conspicuous issue, that in several it was not considered seriously, if at all, and that in none was it a question which presumably influenced votes or on which the State took a specific stand; (5) That to all intents and purposes it was swallowed up in the larger question of State rights; (6) That the States which proposed amendments in the spirit of the tenth amendment, (Massachuetts, South Carolina, New Hampshire, Virginia, New York and North Carolina—besides substantial minorities in Pennsylvania and Maryland) intended thereby to make the States rather than the federal judiciary the guardians of the Constitution; (7) That the jealousy of federal authority on the part of all of these States extended to the judiciary, and was so pronounced as to preclude the idea that the people could have contemplated vesting in the supreme court (much less in any inferior courts) the power to annul an act of congress; their intent plainly was to limit the influence and activities of federal courts rather than to extend them by any possible implication. I conclude further that congress by proposing the first ten amendments, which include—"X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people"—and the several States by ratifying them, intended to reserve to the States the authority to decide upon the constitutionality of acts of congress (a power which was left open by the Constitution itself, and therefore not delegated to the United States), and that the logical result of their action was to do so.

This view I consider is borne out by the terms of the judiciary act of 1789. With the realization that I am treading on dangerous ground in drawing the above conclusions and in advocating an interpretation of the judiciary act pronounced "absurd" by an able scholar, I nevertheless pass on to the consideration of that statute.

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THE JUDICIARY ACT OF 1789

A full discussion of the judiciary act would partake too much of the nature of a legal brief to be permissible in this article; but in any case I am concerned not with what the judges or law-writers have said about it, but with what members of the first congress said about it and with what its language presumably meant to them. Unfortunately the annals of congress give no record of congressional views, nor does Maclay's *Journal*, nor any newspapers I have seen. Therefore we are reduced, once for all to the statute itself, without even any record of amendments to guide us.

A critical study of the Constitution and the statute leads me to the following conclusions: The Constitution leaves to congress not only the organization of the entire judiciary department, but also the practical definition of its jurisdiction except in a negligible number of cases; the statute does not use apt words to give any federal court the power of annulling statutes as unconstitutional; but on the contrary it does expressly, by an elementary canon of construction, deprive the supreme court of such power.

Looking first at the Constitution itself, we are reminded that the entire subject of the judiciary is left to congress, with the single exception that there shall be a supreme court with original jurisdiction in all cases affecting ambassadors, public ministers and consuls, and those in which a State shall be a party; and that the "judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." In other words, if congress had decided to organize a judiciary with no inferior court except a court of admiralty, as was demanded by some of the States, and had further excepted from the appellate jurisdiction of the supreme court, as it had the right to do,[75] all questions of unconstitutionality, the supreme court could not possibly have acquired original jurisdiction over enough

[75] "In all the other cases before mentioned [cases within the judicial power, but where the supreme court has no original jurisdiction], the supreme court shall have appellate jurisdiction, both as to law and fact, *with such exceptions*, and under such regulations, *as the congress may make*." Constitution, art. iii, sec. 2.

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cases to make it an arbiter of constitutionality. It was a thousand-to-one shot that no such case would *ever* arise within the extremely narrow bounds of original jurisdiction; and perhaps that was why Chief Justice Marshall, when by extraordinary chance Marbury's case came before the supreme court on motion and not by appeal, went out of his way to deliver his manifesto on the annullment of unconstitutional laws. Even today cases of original jurisdiction are very rare; and it may well happen that the constitutionality of an act of congress will never again be considered in such a case.

Practically, then congress had the situation in its own hands. Unless it wished to, there was no necessity for it to give *any* federal court authority to decide the constitutionality of *any* federal statute. It therefore seems unnecessary to discuss at all the arguments of Mr. Brinton Coxe and his followers[76] who contend that the Constitution expressly gives the power of annulment to the supreme court.

Practically, then, what did congress do? It was in a position to make the supreme court custodian of the Constitution or to give that authority to the States. Which did it do? The answer is contained in the judiciary act of September 24, 1789, 1 Stat. 73, chap. 20, unilluminated by any of the usual aids to statutory construction—precedent, report, debate, criticism or record of amendment.

That act is largely devoted to the mere machinery of organization—division of the country into districts, provision for sessions and officers of court, process and like matters. Its significant features are as follows: (1) It creates the district courts (sec. 3) with jurisdiction (sec. 9) of certain crimes, admiralty and revenue, certain cases where an alien sues, certain suits brought by the United States, and suits against consuls and vice-consuls; (2) it creates the circuit courts (sec. 4) with jurisdiction (sec. 11) in certain suits brought by the United States, or where an alien is a party, or between citizens of different States, over certain crimes and over appeals from the district courts; (3) it organizes

[76] B. Coxe, *Judicial Power and Unconstitutional Legislation;* J. H. Dougherty, *Power of Federal Judiciary over Legislation.*

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a supreme court (sec. 1) with original jurisdiction (sec. 13) in cases where a State, an ambassador, public minister, consul or vice-consul is a party, and appellate jurisdiction from the circuit court (sec. 22) and also (sec. 25) from a State court "where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is *against* their validity," and where a State statute is questioned, and "where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party under such clause of the said Constitution, treaty, statute or commission."

I am unable to find in this statute, either expressly or by implication, any grant of power to annul an act of congress. It is highly significant that the jurisdiction of none of the courts is extended to "cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." If congress had intended to give the power of judicial control, the inevitable inference is that at least the words of the Constitution would have been inserted in the statute (as they were by Randolph in his draft); intending not to give it, congress need only omit these words. It may be argued that the insertion of these words was unnecessary; that if any courts were created, they acquired such jurisdiction by operation of the Constitution itself. This raises a highly technical question which cannot be pursued in this article; but I may express the opinion that the Constitution does not directly vest jurisdiction in any inferior court, but only describes the limits of possible jurisdiction. In any case it cannot be supposed that congress would have left so important a matter to mere construction; and it is the intent of Congress that we are seeking—its actual, human, common sense intent, and not a fictitious intent by legal implication.

If the inferior courts had no such authority, the supreme court could not acquire it as a normal appellate function. Nor is

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such authority expressly given by the statute. On the contrary, it is expressly withheld.

The supreme court is given the power to reverse or affirm the decision of a state court adjudging a federal statute unconstitutional. In other words, the supreme court may acquiesce in the action of a State annulling a federal statute; or it may reverse the State's decision, and pronounce the law constitutional and valid. But it has no jursdiction to decide of its own accord that the law is unconstitutional. That this result was intentional is the conclusion from one of the elementary canons of construction—that the express mention of one thing is the exclusion of another.[77] The authority to declare an act of congress unconstitutional is expressly granted to the supreme court on an appeal from a state judgment so deciding; therefore it is withheld in all other cases.

To pursue this branch of the subject farther would be to invite the reader into an argument already unpardonably technical. It remains, then, only to sum up the result of my investigations.

It must be conceded, I think, that the earler writers on this topic were too hasty in their conclusions. The evidence is convincing that judicial control was a familiar conception to many of the lawyers of 1787–89, and appealed to a majority of those who discussed it as the logical result of a written constitution. By a fair proportion it was advocated as desirable.

But the precise question of control by the United States supreme court over acts of congress had a very different standing in the debate. It was opposed by all those who disapproved the aggrandizement of one branch of the government at the expense of a theoretically co-ordinate branch; and it was disapproved also by those who favored the retention by the States of as much power as was consistent with a stable and efficient central government.

It may also be questioned whether the theory of judicial control was widely understood or approved outside of the legal profession.

[77] Stimson's *Law Dictionary—expressio unius est exclusio alterius.*

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The entire subject, though discussed in the constitutional convention, was left open in the Constitution. It was subordinated in those ratifying conventions of whose debates we have records, and in the newspapers of 1787–88, to the great question of State sovereignty; and the doctrine of judicial control by the supreme court was expressly and strongly opposed by many of the anti-federalists. The Constitution was ratified by so narrow a margin that it would have been a distinct breach of faith not to have adopted the tenth amendment, reserving to the States and the people the powers not delegated to the federal government, one of which powers was that of deciding upon the constitutionality of acts of congress. And the spirit of that reservation was further recognized and given effect in the judiciary act, vesting in the state courts, but not in the federal courts, the power to annul acts in contravention of the Constitution.

If this reasoning is correct, we arrive by a different path at the conclusion broached by the earlier writers—that our forefathers did not give the United States supreme court the power to annul acts of congress.

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THE WOMEN'S SUFFRAGE MOVEMENT IN ENGLAND

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At present neither the prospect of home rule nor the danger from Germany nor the mighty design of imperial federation assails the public mind of England so insistently as the demand for the enfranchisement of women. Since 1905 it has come to be realized that British men and women are face to face with a change of profound importance, and that the veil of the future hides immense possibilities of good or of ill soon to come.

Allowing British women to take part in the government of the realm is a question of the last century and particularly of the years since 1867, but the antiquarian traces the elements of the problem in the feudal law of the earlier middle ages, when tenure and service rather than persons furnished the basis of organization, and when instances occur of women taking part in local affairs and holding office and jurisdiction. For the most part, however, these instances are valuable now merely as the slender basis for legal argument.

In the seventeenth century some women attempted to influence the conduct of parliamentary affairs.[1] In 1642 a throng of gentlewomen and tradesmen's wives came to the house of commons with a petition against papists and prelates. "Christ hath purchased us at as dear a rate as he hath done men," they said. "You shall, God willing, receive from us all the satisfaction which we can possibly give," replied Pym, who was sent to the door to address them.[2] Next year a great crowd came and cried out against "that dog Pym," and threw brickbats until the horsemen charged them with drawn swords.[3] Several times Lon-

[1] *Cf. Commons' Journals*, i, 348.

[2] *Parliamentary History*, ii, 1072-1076; *Commons' Journals*, ii, 413.

[3] Rushworth, *Historical Collections*, v, 357, 358.

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don women assembled with petitions. Once they halted Sir Simond D'Ewes, and even the mighty Oliver, it is said.[4] These actions, slight beside what was done by the women of Paris in the days of terror, led to nothing, and there is only the shadow of them now in the ridicule of Hudibras and the yellowed tomes of Rushworth.

Toward the end of the eighteenth century, in the days of revolutionists and liberal thinkers, woman's interest in government began to be formally urged. In 1792 Mary Godwin wrote her *Vindication of the Rights of Women.* "I may excite laughter," she said, "for I really think that women ought to have representatives, instead of being arbitrarily governed."[5] In 1797 Fox, speaking in the house of commons against a too wide extension of the suffrage, declared that the superior class of women were far better qualified to vote than the lower class of men.[6] In 1847 appeared the first women's suffrage hand-bill, asserting that good government was impossible unless both sexes were represented.[7] A year later Disraeli, speaking in parliament, declared that in a country governed by a woman and where women had possessed so many privileges of property and jurisdiction, "I do not see . . . . on what reasons, if you come to right, she has not a right to vote."[8] In 1857 the work of a Quakeress, Anne Kent, led to the formation of the Sheffield Female Political Association, the first suffragist organization. A few years after, John Stuart Mill became the apostle of the cause, after which it attracted ever increasing attention. By 1878 a critic who was no friend to the movement wrote that it had reached a point from which "it cannot recede, and from which it is almost as impossible that it should not advance."[9]

Therefore it may be seen that the women's suffrage agitation, so prominent of late, is nothing new. Indeed, the student is apt

[4] *Cf.* Ellen A. M'Arthur, "Women Petitioners and the Long Parliament," *English Historical Review,* xxiv, 698-709.

[5] *A Vindication of the Rights of Woman,* 335.

[6] *Parliamentary History,* xxxiii, 726, 727.

[7] *Cf.* Kaethe Schirmacher, *The Modern Woman's Rights Movement* (New York, 1912), p. 60.

[8] *3 Parliamentary Debates* (abbreviated below *P. D.*), xcix, 950.

[9] Mrs. A. S. Orr, *Nineteenth Century,* iii, 1010.

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to be astonished at the gradual progress made recently. Fifty years ago a few men and more women were saying that which many people are saying nowadays. Viewed as a whole the movement seems only one part of the rise of humanity and the extension of democracy in the nineteenth century. Women have been rising as men have been rising; and they have advanced less rapidly because bound more straightly by the past. But they have realized their disabilities, and with this understanding has come the desire to be free and better. The most important factors in this development have been the achieving of a partial economic enfranchisement and the gaining of intellectual freedom through education.

Suffrage enthusiasts are not justified in their extreme accounts of the legal disabilities of women in olden times; for historically it seems certain that many of the inequalities were designed to protect women more than to depress them. It is certain, however, that by Glanvil's time most English women had before the law a position subordinate and inferior. By the end of the eighteenth century there had been some amelioration, but the inequality was still very striking. Generally speaking, women could not hold office and could take no part in the elections. They were debarred from jury service, and in some instances oppressed with harder punishments. Otherwise women who were unmarried had the same legal status as men, except in the inheritance of entailed estates. Married women, however, the great part of the female population, were on a distinctly different footing. By marriage the husband and the wife were one person in law, and the existence of the woman was merged absolutely in that of her partner, under whose cover "she performs everything; and is therefore called in our law french a *feme covert*."[10] The woman was *feme*, the husband *baron* or lord, to whom she owed obedience, and for whose murder she would be guilty of treason. Since the husband was accountable for the conduct of his wife, he might restrain and chastise her; and although she had come to have reasonable security, Blackstone confesses that "the lower rank of people, who were always fond of the old common law, still claim

[10] Blackstone, *Commentaries*, bk. i, ch. 15.

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and exert their ancient privilege."[11] On marriage the woman's personal property became the husband's, as did the revenue of her estates. Since she had no legal existence, she could make no contract. The children belonged to the father. Divorce was difficult. For slander there was no redress. "So great a favourite is the female sex of the laws of England."[12]

The burden of law and custom, once borne in silence, was endured unwillingly, when the circumstances of a changing age brought greater freedom. Of all the changes which contributed to the uplifting of women, education, and particularly higher education, was the most important. At the beginning of the nineteenth century there was scant opportunity for girls to carry on studies beyond the elementary stage, and generally education was poor and difficult to obtain. For 1843 the marriage registers show that nearly half of the women were unable to write, while this was true of less than a third of the men.[13] As time went on education was made better and more widely diffused, but even more important was the work done about the middle of the century in giving to women advanced instruction and college training. Gradually they were admitted to colleges and universities, and then obtained part of the empire of knowledge, so long in the possession of men. The deeper insight and the broader view thus gained make this movement as important to the womanhood of England as the Renaissance was to the companions of Petrarch and Erasmus.

This freeing of the intellect was accompanied by growing economic importance and some economic freedom. The story of the breaking up of the old home industries and the concentration of manufacturers in the factories of capitalists has often been told, and also the hideous wrongs which beset the women and children gathered there; but it was by the industrial revolution that economic independence was obtained. The women who had previously worked in the homes of their fathers or husbands, now worked beyond their supervision for wages, and as time went by came to regard these wages as their own and to keep them.

[11] *Ibid.*
[12] *Ibid.*
[13] *Statesman's Year Book, 1911*, p. 31.

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And finally, to these causes there was added another which if ultimately less powerful was directly the most effective of them all, and that was the greater number of women. At the beginning of the century there were in England and Wales nearly 400,000 more women than men. For a long while the sons of the nation had been going out into new homes, and all too frequently their women had not gone with them. Continually the surplus of women increased. Nothing explains the intensity of the forces which now appear so clearly as the figures of the census.[14] In 1913 the women exceeded the men by 1,200,000, so that there is a large number who cannot possibly marry. Herein not a few students have seen the cause of the suffrage movement,[15] while antagonists have believed that the remedy lies in correcting an abnormal situation. The suffragists, they say, are the incomplete and sexually embittered;[16] the mateless woman of England should join their men in the newer lands beyond the sea.

Such are the conditions of the problem. The position of women in England was not that of men, and the inequalities were endured less willingly as women obtained knowledge and financial independence. Many were indifferent or conservative; but the bolder or more impatient were constantly urged on by an increasing

[14] CENSUS	POPULATION	MEN	WOMEN	EXCESS OF WOMEN
1801	8,892,536	4,254,735	4,637,801	383,066
1811	10,164,256	4,873,605	5,290,651	417,046
1821	12,000,236	5,850,319	6,149,917	299,598
1831	13,896,797	6,771,196	7,125,601	354,405
1841	15,914,148	7,777,586	8,136,562	358,976
1851	17,927,609	8,781,225	9,146,384	365,159
1861	20,066,224	9,776,259	10,289,965	513,706
1871	22,712,266	11,058,934	11,653,332	594,398
1881	25,968,286	12,624,754	13,343,532	718,778
1891	29,001,018	14,050,620	14,950,398	899,768
1901	32,526,075	15,721,728	16,804,347	1,082,619
1911	36,075,269	17,448,476	18,626,793	1,178,317

Statesman's Year Book, 1882, p. 240; *1892*, p. 14; *1902*, p. 14; *1912*, p. 12.

[15] *Cf. Ninteenth Century*, iii, 1013.

[16] Letter of Sir Almroth Wright, London *Times* (weekly), March 29, 1912.

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army of unmarried women forced out of the home to carry on an unequal contest with men.[17] These women believed that great changes were necessary for their welfare, and that these changes could only be obtained with the ballot.

The movement for enfranchisement became a real force in England in the days of John Stuart Mill. Before his time earnest people had spoken and labored for it, enthusiasts had gained notoriety, literature had been circulated, and some societies had been founded; but it was a novelty which encountered ridicule more than respect until Mill became its champion. In 1865 he was sent to the house of commons for Westminster. In writings and speeches he had already declared himself heartily in favor of women's suffrage; now he brought the matter before parliament.

In 1866 the second struggle to extend the parliamentary franchise reached its culmination with the introduction of the "representation of the people's bill." On May 20 of the year following Mill proposed to amend the fourth clause by substituting "person" for "man," so that women might not be excluded. Women, he said were neither unfit nor dangerous. The place of woman was the home, but suffrage would not interfere with her work. The exclusion of women because of sex was in violation of the old established English doctrine that taxation and representation should go together. Women were interested in the larger concerns of life as were men, to whom they were companions, and from whom they could not be thrust apart. "The time is now come," he declared, "when, unless women are raised to the level of men, men will be pulled down to theirs."[18] The amendment was rejected, but after events were to show that this was the beginning not the end of the struggle.[19]

The reform act of 1867 provided that every qualified "man" might vote,[20] thus changing the provision of the act of 1832 which had given the franchise to male persons.[21] Suffragists assert that

[17] *Cf.* 3 *P. D.*, cclxxxviii, 1946, 1947.
[18] 3 *P. D.*, clxxxii, 1253; clxxxvii, 817-829.
[19] 3 *P. D.*, clxxxvii, 843.
[20] 30 and 31 Victoria, c. 102, sec. 3.
[21] 2 and 3 William IV, c. 45, sec. 19.

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according to the old law and custom of England women were permitted to vote, that abbesses were summoned to parliament,[22] that women took part in local elections,[23] that the election law of 1429 did not restrict the suffrage to men,[24] and that the term "man" whenever used in old legal documents denotes women as well as men.[25] In 1850 it had been enacted that "in all Acts Words importing the Masculine Gender shall be deemed and taken to include Females."[26] Accordingly the courts were now asked to determine whether under the provisions of the new law women were not entitled to vote; but in 1868 they decided that the privilege was not so granted.[27] In 1884 the third Reform Act, which widened the electorate still further, continued the exclusion of women by allowing the suffrage to "every man" therein described.[28]

Failing to obtain their desire through legal construction, the suffragists sought enfranchisement through a statute of the realm. Mill was not returned to the house of commons, but the cause was taken up by his associates and by new advocates who appeared. In 1870 Jacob Bright brought forward the women's disabilities bill, the first women's suffrage measure presented in England. It was thoroughly debated, but was lost after the second reading.[29] Thereafter numerous bills were introduced, frequently several in the same year, and debates became longer and more and more frequent.[30] Most of the measures proposed were never considered at all, but on seven occasions suffragist bills passed the second reading.[31] Meanwhile in 1884 strenuous efforts were made for an amendment to the pending reform bill so that women might be included. In the same year the aged Lord Denman presented

[22] *Cf.* Palgrave, *Parliamentary Writs*, i, 164.
[23] *Cf. Commons' Journals*, i, 875.
[24] *Cf. Statutes of the Realm*, ii, 243.
[25] *Cf.* C. C. Stopes, *British Freewomen, Their Historical Privilege.*
[26] 13 Victoria, c. 21, sec. 4.
[27] Court of Common Pleas. Chorlton *v.* Lings.
[28] 48 Victoria, c. 3, sec. 2.
[29] 3 *P. D.*, cci, 194, 239, 607.
[30] *Cf.* Mrs. M. G. Fawcett, *Women's Suffrage*, 84.
[31] In 1870, 1886, 1897, 1908, 1909, 1910, 1911. *Cf. A Brief Review of the Women's Suffrage Movement Since Its Beginning in 1832* (London, 1911).

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in the house of lords a bill "for extending the right of voting at parliamentary elections to women."[32] Every year thereafter for the next decade he brought up the matter, but could never gain a hearing, because of the objection usually urged that the lords should not first consider a measure affecting the house of commons.[33]

The history of these efforts during forty-five years presents the curious problem of no progress being made in parliament, despite the fact that the matter was kept before the commons year by year, with repeated and lengthy discussion, with many bills introduced, and with some of them having heavy majorities on second reading. Apparently there was during most of this time a majority in favor of such a measure, and this the suffragists confidently maintain.[34] In 1911 Sir George Kemp declared that a stranger inquiring about women's suffrage would be told that "for the last quarter of a century it had a permanent majority in this House."[35] Whether this majority contained for the most part men who would work to the end for the consummation of their purpose, or whether it was composed of supporters who were advocates up to a certain point and lukewarm thereafter, it is difficult to decide. There is, however, no doubt that this majority existed only in so far as it was assembled around the principle of women's suffrage, and had otherwise no cohesion or strength. It was admitted from the first that the question was not political in the ordinary sense.[36] Both parties were divided on the question, so that the advocates of enfranchisement came from each of them without the support of either. Politically, then, the chief cause of the failure of the movement is that neither of the great parties in the house of commons has made women's suffrage a government measure, and that therefore the cause has lacked the powerful force of party organization and political

[32] 3 *P. D.*, cclxxxix, 1860.

[33] 3 *P. D.*, cccx, 256, 257, 258.

[34] "There has been a majority in the House of Commons in favour of women's suffrage since 1886." Fawcett, *Women's Suffrage, 85. Cf.* 4 *P. D.*, cxlvi, 218.

[35] 5 *P. D.*, xxv, 744.

[36] 4 *P. D.*, xlv, 1174. *Cf. ibid.*, cxxxi, 1335; cxlvi, 218.

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machinery. It would seem, moreover, as sympathizers have declared, that obstacles have been cunningly placed in the way.[37] In 1911 Mr F. E. Smith, in a debate on the parliament bill, asserted that if the prime minister would give facilities for full parliamentary discussion, women's suffrage would be carried into a law within two years.[38]

The women's suffrage bills introduced into parliament bore various titles. Some were bills for the removal of the disabilities of women, some for the enfranchisement of women, and some for the extension of the parliamentary franchise.[39] The purpose of all of them was to allow women to vote in elections for members of the house of commons, and the avowed object was to remove disabilities resulting merely from sex.[40] Upon what women the privilege was to be conferred was not always clear. The earlier bills proposed to enfranchise widows and spinsters with qualifications prescribed.[41] Such a measure would not have enlarged the electorate to a very great extent. In 1876 it was estimated that by the terms of Mr. Forsyth's bill parliamentary elections would be made by thirteen women for every hundred men,[42] and shortly after it was said that not more than 400,000 names would be added to the lists.[43] Even the legislators of 1910 proposed to enfranchise no more than 1,000,000 women, or, roughly, one woman to every seven men.[44] The more ardent leaders, however, were at no time willing that women should be excluded because they were represented by husbands, and it was often suspected that any legislation carried would permit wives to vote, leading perhaps to adult suffrage, and that such was the design of the advocates, if not directly, at least as an ultimate consequence.[45]

[37] 3 *P. D.*, cccii, 700.
[38] 5 *P. D.*, xxv, 1660.
[39] *Cf.* 3 *P. D.*, ccix, 90; cccii, 187; 4 *P. D.*, xiii, 404.
[40] 3 *P. D.*, cclxxxi, 664; 5 *P. D.*, xxv, 738.
[41] *Cf.* 3 *P. D.*, ccxxviii, 1659.
[42] 3 *P. D.*, ccxxviii, 1667.
[43] *Ibid.*, ccxl, 1827.
[44] 5 *P. D.*, xxv, 739-741.
[45] 3 *P. D.*, ccxxviii, 1669; ccxxxiv, 1364; cclxxxi, 718.

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As there were more women in the country than men, this was constantly urged as a capital objection.[46]

Many of the arguments about women's suffrage have been repeated so often that what seems striking in 1867 is familiar by 1884 and in 1913 interesting only through intrinsic merit. Therefore the arguments advanced on one side or the other during the past fifty years may be properly summed up and treated in one place together.

Suffragists declare that women suffer under disabilities that only the ballot can remedy. Much has been done to remove the injustice of unequal laws, married women have been given control of their property, a wife is no longer *feme covert*, and the husband is no longer her lord; but the divorce laws are unequal, the father is the sole parent of the children, the husband is the sole owner of his income, the age of consent is too low, and new social and industrial laws may bring new discrimination.[47] They say, also, that industrial salvation can only be obtained in the way that men have obtained it, by making their influence felt in the government.[48] Until they can make legislators fear them, legislators will never heed them. Men's trade unions were not legalized until the ballots of laborers were feared,[49] and since 1832 the wages of men have risen greatly while the wages of women have lagged far behind.[50] The government, they say, deliberately pays its women employees at a lower rate than its men, while the more profitable positions are withheld from women altogether.[51] In

[46] "Woman suffrage means adult suffrage; and adult suffrage means the transfer of the right to govern the United Kingdom from some 7,000,000 of men to some 20,000,000 or, it may be, 24,000,000 of men and women, whereof women will be the majority." A. V. Dicey, *Quarterly Review*, ccx, 299 (January, 1909).

[47] *Cf.* Frederick W. Pethick Lawrence, *Women's Fight For The Vote* (London, 1911), 28-36; 4 *P. D.*, cxxxi, 1358.

[48] *Some Reasons Why Working Women Want the Vote* (leaflet).

[49] Geraldine Hodgson, *Five Points in the Relation between Votes for Women and Certain Economic and Social Facts* (leaflet).

[50] 3 *P. D.*, ccxl, 1810; 4 *P. D.*, cxxxi, 1334, 1345; "*Easier to Starve*" (leaflet). In 1905 it was asserted that the average weekly wage of British working women was seven shillings. 4 *P. D.*, cxlvi, 223.

[51] Pethick Lawrence, *Women's Fight For The Vote*, 37-44.

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an age when a vast number of English women are compelled to support themselves such a situation is intolerable.[52]

They assert also that it is unjust for them not to be represented in the government, and most fitting and necessary that they should have a part in it. Again and again have they denounced taxes without representation, and the fact that they must obey man-made laws but have no voice in making them.[53] "You admit women to the gallows and the gaol, to the Income Tax list and the poor rate book. By what right do you debar them from the ballot box?"[54]

Aside from the justice of giving votes to women, such enfranchisement would be for the good not merely of women but of men and of the state as well. Some things affect women particularly, and there are some which men can never understand as they do.[55] Such are questions relating to morality, education, the care of children, and all social and economic matters affecting municipalities, which may be regarded as the surroundings of the home.[56] Men can do some kinds of work better than women, who are in other respects superior. At present the state loses the intelligence and energy which women, when they are allowed to vote, will bring to bear in government for the betterment of all men, women and children.[57]

Whenever in the past there have been proposals to increase the electorate, the novelty of the thing has aroused distrust in the conservative part of the nation. This was so in 1832, 1867, and 1884, and opposition preceded all attempts to remove disabilities from Catholics, Jews, Dissenters, and Irish. But in no instance have the disasters followed which were predicted. In the case of women such fears are evidently groundless, for women are now asking for the parliamentary franchise after they have been admitted to vote in local elections. Gradually single women and

[52] 3 *P. D.*, ccxl, 1840.
[53] *What Is A Vote?* (leaflet).
[54] 3 *P. D.*, cclxxxix, 162. *Cf. Punch*, May 10, 1905.
[55] *A Wider World* (leaflet).
[56] *Let the Women Help* (leaflet); *White Slave Traffic* (leaflet).
[57] *Men & Women Together* (leaflet); *The Question of the Moment* (leaflet).

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widows have been made eligible as electors and even candidates in one local unit after another, until at last they may vote in elections for parish, district, town, and county councils, for poor law guardians and for school boards.[58] If women can be trusted to do work of this kind, and it is admitted that they are doing it well, there can be no doubt that they are qualified in experience, ability and intellect to take part in the conduct of national affairs. The recent experience of the younger British commonwealths and of some of the states of North America proves, they say, the truth of this contention.[59]

And finally, the effect upon women would be desirable from every point of view. The traditional woman's life of circumscribed activity, narrow interests, dependence and servility, make her unfitted to do her best work in the modern world. Participation in politics and interest in larger things would make her finer and happier, a more admirable human being, a mother more worthy of the respect of sons and daughters, a truer wife, a more sympathetic companion to her husband. Then she would receive more honor and respect because she deserved it. The world would award her more because she would be better and could do more for the world.

Against all this it is urged that the proper work of men and of women is distinctly divided by nature.[60] The place of woman is primarily in the home as a wife and mother, and the tasks outside are for the most part man's. Any undue enlargement of the duties of either sex is detrimental to the interests of the other. If women engage actively in politics, they will probably be less willing to marry, and so the state will suffer grievously while the neglect of home duties by the mothers will bring enduring harm to children. Nor, if women exhaust their nervous strength in assuming new and needless duties, will they be fitted as before to enter into marriage and motherhood.[61] All this is realized by

[58] *Cf.* 4 *P. D.*, xlv, 1175; *The Anti-Suffrage Handbook* (London, 1912), 67-69. For the most part married women are debarred from these rights.

[59] 4 *P. D.*, cxxxi, 1333; but *cf. The Anti-Suffrage Handbook*, 59.

[60] *Manifesto. No Votes For Women* (leaflet).

[61] *Cf. Nineteenth Century*, lxxii, 179, 180 (July, 1912).

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most women, who do not desire to have the suffrage thrust upon them.[62]

The very temperament of women and the relations of the sexes make voting by women undesirable. It is the nature of women to be hasty, emotional, subject to influence, and at times not capable of just decision. The success of English institutions and the growth of England's power are due to the resolute steadiness of Englishmen, which would be lost if feminine whim and impulse entered into government.[63] As women are more subject to religious domination than men, the government might, when they voted, get into the hands of prelates and priests.[64] Nor would there be the old harmony in family life or the sweet dependence of woman upon man. Then husband would be divided from wife, and they might conceivably be opposing candidates at elections.[65]

The national affairs of Great Britain are men's affairs, and must be so. The empire has been built up with the efforts and the lives of great men, and only their sons can rule it. Things that affect the existence of the nation cannot be left to the inexperience, the sentiment, and the wavering decision of women, nor would the subject races of the east ever endure such rule.[66] Moreover, the admission of women to the parliamentary franchise would mean the ultimate domination of women over men in England. When women vote they will never be content until they hold office.[67] Then, since there is a majority of women, females will rule, and then will men suffer petticoat domination in the government which once they created.[68]

A government based partly upon the votes of women would fail because the decrees of such a government could never be

[62] 4 *P. D.*, cxlvi, 235.

[63] 3 *P. D.*, cclxxxix, 103; 4 *P. D.*, cxlvi, 227.

[64] 3 *P. D.*, ccxl, 1805; ccxxviii, 1700.

[65] 4 *P. D.*, cxxxi, 1342.

[66] *Woman Suffrage And India* (leaflet); A. C. Gronno, *The Woman M. P., A Peril to Women and the Country*, 35.

[67] 3 *P. D.*, cccii, 697.

[68] "*Votes For Women,*" *Never!* (leaflet); 3 *P. D.*, cclxxxix, 173. In 1904 Mr. Labouchere said: "If the Resolution was adopted, therefore, the country would be absolutely in the hands of women." 4 *P. D.*, cxxxi, 1339.

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enforced against the wishes of a majority of the men. Government, say the upholders of this view, rests ultimately upon force, and in the last resort upon nothing else. The acquiescence of the minority in the will of the majority is based upon experience gained through ages of fighting, that the majority can enforce its will; and at present it is well understood that the greater number of votes represents what was once the greater number of fighting men, and what would be again, if there were need of it. But with women in the electorate this could not usually be certain. If there came a day when a majority was made up of the greater number of women and the smaller number of men, while the minority embraced most of the men and the lesser of women, then in all probability the minority would overturn the government and enforce its desire, because it could do so.[69] Therefore, while women should have full civil equality and, if need be, local political rights, they ought not to have part in the government of the realm, since they cannot bear arms against its enemies nor enforce its decrees at home.[70]

Women do not need the vote, nor it is well for them to have it. Women are not held in servitude by the tyranny of men. The old legal inequalities, which arose in the midst of different conditions, have been removed one after another, until now, in some instances, the woman is favored at the expense of the man.[71] Throughout the nineteenth century parliaments of men passed laws to assist and protect women workers. Inferiority of women's wages is not the result of laws, but is owing to the inferiority of women's work and to far-reaching economic causes which suffrage alone never can remove.[72] Not only would enfranchisement not cure the ills of which suffragists complain, but women, seeking

[69] Dicey, *Quarterly Review*, ccx, 293, 294; 4 *P. D.*, cxlvi, 233.

[70] A. MacCallum Scott, *The Physical Force Argument Against Woman Suffrage*, London, 1912; but *cf.* 4 *P. D.*, cxxxi. 1346: "they had borne in their own arms those who became able to defend it."

[71] *The Anti-Suffrage Handbook*, 48-51.

[72] A. M. Scott, *Equal Pay For Equal Work, A Woman Suffrage Fallacy*, London, 1912; *cf.* 4 *P. D.*, cxlvi, 231.

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vain remedies in the world of politics, would become less womanly and undergo inevitable deterioration of character.[73]

Such are the arguments which are scattered through the parliamentary debates for fifty years, which reappear in the newspapers continually, which are to be heard of evenings in assembly halls and on Sundays in Hyde Park, and which issue forth in a ceaseless stream of pamphlets and flying leaves. In such a controversy the historian is at a loss to decide. Contentions once revolutionary now appear reasonable, while some of the opposition is that prejudice and unreason which ever clog the steps of progress. Nevertheless, it is no easy task to declare to which scale the finger of destiny points, or in which finally will be found most of right and of justice.

The debates in parliament and the arguments in meeting and press represent only a part of the work done by organizations of women which have multiplied exceedingly and grown to huge proportions. In 1867 women's suffrage societies were founded in London, Edinburgh, and Manchester, and shortly after in Birmingham and Bristol.[74] These bodies soon united to form the National Union of Women's Suffrage Societies, the oldest, the largest, and the most useful organization of its kind in the world. It is supported by 40,000 members, has more than 400 branches and affiliated societies,[75] and publishes a paper entitled *The Common Cause*. Its purpose is "To promote the claim of Women to the Parliamentary Vote on the same terms as it is or may be granted to men,"[76] and its work has been done so ably and withal so quietly that many believe such women to be worthy of that which they request. In 1903 was founded the Women's Social and Political Union, presently to be described.[77] Its

[73] It may be remarked that a great many men and women, who are averse to the granting of parliamenrary suffrage to women, are thoroughly in favor of having them engage in local politics, saying that here they are well fitted to take part, here their true interests lie, and here they could be of real service to themselves and to the state.

[74] Fawcett, *Women's Suffrage*, 85.

[75] *National Union of Women's Suffrage Societies*, report, 1913.

[76] *Constitution of the National Union*, etc.

[77] Pethick Lawrence, *Women's Fight For The Vote*, 77.

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organ is *The Suffragette.*[78] In 1907 arose the Women's Freedom League, and also the Men's League for Women's Suffrage. Organized opposition came later; in 1908 appeared the Women's National Anti-Suffrage League, and the Men's League for Opposing Women's Suffrage. Two years later they combined to form the National League for Opposing Women's Suffrage, a body which contains some of the most prominent people in England. Its publication is the *Anti-Suffrage Review.* These societies have well-equipped headquarters, distribute vast quanties of campaign literature, hold meetings, organize processions, circulate petitions, attempt to influence elections, and carry on a vigorous propaganda.[79]

For the most part this is the situation, and down to 1905 this was the situation, in England. The work was done earnestly but in quiet. Some women refused to pay taxes without parliamentary representation, but there was little of the boisterous and sensational. A great deal of solid progress was being made, and the country seemed preparing for mighty transformation in the future; but public attention was not distracted and the opponents of women's suffrage were not alarmed.[80] Suddenly the entire situation was altered by the rise of militancy, one of the most baffling problems in contemporary politics.

In 1892 some of the suffrage advocates had been stigmatized as "wild women,"[81] but the new methods can scarcely be said to have been employed until 1905 when Mrs. Pankhurst and her daughters raised the Women's Social and Political Union into sudden prominence. The members of this organization, believing that constitutional methods had too long been of no avail, that the house of commons never granted what it was not compelled to give, flung back the taunts that women would not fight for their cause, and began to apply methods of force, annoyance

[78] Until 1912 its organ was *Votes for Women,* now published by Mr. and Mrs. Pethick Lawrence, who seceded from the Union in that year.

[79] *The Historic Anti-Suffragist Demonstration,* etc., London, 1912; Mrs. Fawcett, *The Best Friends of Women's Suffrage* (leaflet).

[80] Some of the opponents believed that the whole matter was an academic question. *Cf. The Anti-Suffrage Handbook, 12.*

[81] *Nineteenth Century,* xxxi, 455.

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and coercion. In October of that year Annie Kenney and Christabel Pankhurst at a meeting in Manchester insisted that Sir Edward Grey declare the intentions of the Liberal party in the matter of women's enfranchisement. In the midst of noise and disorder they were ejected from the hall.[82] In April 1906 during a suffrage debate in the commons, proceedings were interrupted by cries and cheers from the ladies' gallery. After a while the speakers were silenced under shouts of "We will not have this talk any longer," "Divide, divide," "Vote, vote, vote," "Vote for Justice for women," "We refuse to have our Bill talked out." Nor was there order until the gallery had been cleared.[83]

And now appeared tactics as startling and novel as they were effective. Everywhere political meetings were invaded by women who bound themselves to pillars or chained themselves to seats and then interrupted and shouted and screamed. Government officials high and low were sought out and pestered by determined women whom only the police could turn away. They invaded the lobbies of parliament and the homes of ministers, and nowhere were men safe from their questions or their missiles. In a short time the government was undergoing a mild siege, and the "suffragettes," as the militant women were called, had made good their boast: they had brought their cause into prominence at last.

When the Liberal party came into power in 1906 many of the suffragists hoped that at last their desires would be fulfilled. It had long been evident, in the development of British parliamentary procedure that bills introduced by private members had no chance of success unless the government gave facilities and assistance. This support had long been denied, but it was believed that the Liberals would now give it. Moreover in May 1908, Mr. Asquith announced that the government proposed to introduce a bill for further electoral reform, and that if an amendment for the enfranchisement of women were added, he would not hinder it. He himself was strongly opposed to women's suffrage, but the larger part of his cabinet seemed to favor it. Prospects of success appeared brighter now than ever before, but the country became

[82] Pethick Lawrence, *Women's Fight For The Vote*, 77-83.
[83] 4 *P. D.*, clv, 1570-1587.

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absorbed in the desperate struggle between lords and commons with swiftly succeeding general elections, so that for a while nothing could be done.

In 1910 a "conciliation committee" was formed in the house of commons to enable the suffragist advocates in both parties to work effectively and prepare a measure which would be acceptable to all of them. A bill was drafted to enfranchise women householders or occupiers. It was displeasing to those who had been working for the simple removal of sex disqualification, but was received with considerable satisfaction, since it would give the franchise to about 1,000,000 women. This bill passed second reading by a majority of 109, but got no farther, Mr. Asquith refusing the facilities necessary.[84] Meanwhile the suffrage societies and their supporters marched in great processions, a vast number of petitions for the conciliation bill came in, and a gathering in Hyde Park was attended by half a million people. Again parliament was dissolved, and the suffragists as before did all that they could to bring enfranchisement before the country as an issue. In November Mr. Asquith promised explicitly that if his party dominated the next parliament he would give facilities for a women's suffrage bill drawn to admit of free amendment.[85] The supporters of the cause now felt that they had two chances of success, the amendment of the proposed reform bill, and the passage of a bill of their own.

In 1911 the conciliation committee introduced a bill differing slightly from what they had proposed the year before, and designed to meet the objections then raised. Substantially, the vote would be given to the women householders. For this bill on second reading there was a majority of 167.[86] What would have befallen this measure in the next session one may not say. The old methods of burking might have been tried again successfully, but there now seemed to be a favorable majority in the cabinet and also in the commons, while there was friendly sentiment for it all over the country. At this juncture, however, the militant

[84] 5 *P. D.*, xix, 41, 324, 2587.
[85] 5 *P. D.*, xx, 272, 273.
[86] *Ibid.*, xxv, 738, 806.

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women who had been at truce with the government, burst forth in fury. In November, 1911, the prime minister announced that he was about to introduce a manhood suffrage bill. Although he reiterated his promise of facilities for the conciliation bill, and again undertook, a few days later, to allow a women's suffrage amendment to be brought to government's measure, the suffragettes, who desired that the government include women in the reform bill, felt that they had been betrayed.[87] "It was as if Mr. Asquith had spat in my face and that of my whole sex," one of them declared.[88] At once the wild women broke loose. In November, 1911, and again in March, 1912, they descended upon Oxford Street, Picadilly, Cockspur Street, and the West End, and smashed a prodigious number of windows with hammers and with stones.[89] Attempts were made to set fire to theatres and public buildings, and by the spring of 1913 it had become necessary to maintain constant guard over all the historic buildings of England. Meanwhile letter-boxes were filled with inflammable liquid, wires were cut, bombs were placed in doorways, and places of amusement were burned down. In the years from 1911 to 1913 there was a veritable rebellion of the suffragettes against the government of England.

Whatever may be said of the wisdom of the militants or even of their motives, there is no question that they acted with the greatest hardihood and boldness, reviving for modern days the grandest traditions of the warrior women of the past. They stopped at nothing to accomplish their purpose, and refused all compromise. In many cases there can be no doubt that their motives were lofty and pure, and that they were willing to endure martyrdom for their sex and for the welfare of the world. Even in prison they defied their enemies, and baffled their jailers with the hunger strike, one of the most effective weapons which rebels have ever employed. And finally, some of them endured the horrors of forcible feeding, a torture not much exceeded by the worst done in Mexico or Russia. Nevertheless, it has followed

[87] *Times* (w), Nov. 10, 1911.
[88] *Ibid.*, Nov. 24, 1911.
[89] *Times* (w), Nov. 24, 1911, March 8, 1912.

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as an inevitable consequence that these women have for the present worked harm to their cause. Much done by them has been ugly, and has seemed sneaking and mean. Breaking the windows of unoffending tradesmen, burning pavilions, destroying letters, and poisoning dogs, give small dignity to the best cause. Nor is the world prepared as yet to see women use violence. In vain the suffragettes declare that in fighting by such means as they can, they but follow in the footsteps of the heroes and martyrs of old, who sacrificed themselves for the good of posterity. It has been pointed out that when in the past men have resorted to violence, they have thus signified their readiness to begin an armed revolution, something that women can never do with any hope of success. Therefore since 1905 there has been a gradual revulsion of feeling, which by 1913 is intense. Many who were once amused or indifferent are now hostile, and the suffragists themselves confess that the suffragettes have done immense harm,[90] and have postponed indefinitely the grant of the parliamentary franchise to women.

Whatever be the cause, such is the result. In March, 1912, the conciliation bill was defeated, and this was attributed to the smashing of the windows.[91] The constitutional suffragists now as a last recourse strove valiantly to rescue the passage of a women's suffrage amendment to the government's measure, but in January, 1913, the speaker ruled that a bill so amended would be a new bill, and would have to be withdrawn and re-introduced. So after all the years of striving and endeavor, the suffragists found themselves left with nothing more than the old expedient, so often discredited, of the private member's bill. And as each new failure is recorded, and the conduct of the militants becomes increasingly violent, the government at last seems to be gaining that measure of popular support without which it has been willing to proceed to extremities. In 1912 the suffragette orators in Hyde Park could no longer obtain a favorable hearing, and for a while in 1913 they needed police protection wherever they appeared. The authorities have not yet been willing to allow a woman to die of the hunger

[90] *Broken Windows—And After* (leaflet).

[91] 5 *P. D.*, xxxvi, 728; xl, 643; *Times* (w), March 29, 1912.

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strike, but they now release the strikers only in the last extremity and, under the "cat and mouse act," only during good behavior.

Such is the situation as it seems at present. After a long period of intelligent activity the suffragists have made tremendous progress, but at present the cause is in disrepute because of the militant women.[92] The ultimate value of the militant activity cannot yet be estimated. It may be that at the cost of temporary obloquy these women are gaining the attention and compelling the respect which their cause did not have before; and it must be remembered that in the history of American slavery the mild abolitionists accomplished little until Garrison and the anti-slavery agitators began their work. On the other hand it must be said that these ardent champions of the woman's cause have deliberately invoked violence and force, and hitherto the betterment of woman's position has been brought about by staying these things in her presence.

Whether most of the women in England now desire the suffrage, or whether most of the intelligent ones desire it, cannot be known. Various attempts have been made to ascertain this. On several occasions a referendum has been suggested.[93] Partial censuses of women have been taken by rival organizations, but the results are inconclusive since huge majorities are reported to favor the principles of the societies which make the enumerations.[94] Many people are working for women's suffrage and many are working against it, but the majority of the nation has probably as yet given no voice to its opinion and little approbation to the cause.

[92] Upon this passage, Miss Olive A. Jelley, of the National Union remarks: "This is of course a matter of opinion, but speaking for the National Union of Women's Suffrage Societies, that Society is growing rapidly in numbers and activities generally. The membership has increased from 30,000 in October, 1911 to 43,000 in May 1913. These numbers represent only annual subscribers and not friends and supporters who do not pay regular annual subscriptions, of whom we count about 20,000. The number of our affiliated societies has risen from 311 in 1911 to 450 in June, 1913, and our funds for the last three years show a similar increase."

[93] *Cf.* 5 *P. D.*, xix, 1747; xxviii, 1517.

[94] *Cf.* "A Canvass of Women Municipal Electors in 105 Districts," *Anti-Suffrage Review*, April 1912; Fawcett, *Women's Suffrage*, 51.

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Writing the history of the present is difficult chiefly because of the difficulty of interpretation, and particularly in the case of a problem so baffling and complex as the movement for women's suffrage. Right and wrong there must be on both sides, and the final balance cannot be struck until many generations hereafter. He would be rash as the *Ecclesiazusae* who supposed that if enfranchisement is made complete women will obtain all their hopes and desires, or be able to keep all that they fondly assume they can retain. And yet I believe that the historian of the future will record that in the twentieth century Anglo-Saxon people put political power into the hands of the women whom they had made intelligent, and so once more taught nations the art of governing better; and it may be that even the student of now, peering back into the ages and seeing the long procession of women toiling through the mists and despair of the valley of the past, beholds them at last mounting up to the higher ground where with men they will work out the future of the world.

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ELECTORAL REFORM IN FRANCE

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I. HISTORICAL REVIEW

Since the separation of church and state in 1905 the paramount question of French internal politics has been that of electoral reform. No other question has been so much discussed in parliament and in the country, or has been the subject of so many reports, books, brochures and magazine articles. It has occupied a leading place in the ministerial declarations of the last five cabinets and has caused the downfall of one. It was one of the paramount issues in the parliamentary elections of 1910 and an overwhelming majority of the deputies in the present chamber were chosen upon programs which pledged them to the support of electoral reform.[1] Furthermore, the present chamber, elected in 1910, has on four different occasions by large majorities voted in favor of electoral reform and on July 10, 1912, it passed a bill by a vote of 339 to 217 embodying the more important reforms demanded by the country. But so far the senate has refused its concurrence.

The chief reform demanded by the country and the one which the chamber of deputies has several times approved by large majorities is the substitution of the general ticket method (*scrutin de liste*) of electing deputies, coupled with a system of proportional representation, in the place of the single-member-district method (*scrutin uninominal*, or *scrutin d'arrondissement*) which

[1] The programs or platforms of the deputies elected in 1910 have been collected and printed by the state under the title: *Programmes, Professions de Foi et Engagements Électoraux de 1910*, No. 385 (Annexe) ch. des Déps., Dixième Lég. ses. extra. de 1910. Paris 1910, pp. 1267. A summary and analysis of these programs may be found in the parliamentary document entitled: *Programmes et Engagements Électoraux*, by Camille Foquet, No. 385, ch. des Déps. Dixième Leg., ses. extra, de 1910.

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has been in force since the establishment of the Third Republic, with the exception of the period from 1885 to 1889. Another reform for which there is more real need and one which has been the subject of a multitude of parliamentary reports and *projéts* is legislation to insure secrecy of voting and for the protection of the elections against corrupt and fraudulent practices. Bills for this purpose have passed both chambers a number of times in recent years but not until July of the present year were they able to agree upon a common measure.

Since 1789 France has oscillated in practice between the "scrutin d'arrondissement" and the "scrutin de liste" methods of electing deputies, each method in one form or another having been six times tried and as many times abandoned.[2] The republicans of 1848, considering the "scrutin de liste" system as being more in accord with republican ideas than the system of "scrutin d'arrondissement" adopted it by a practically unanimous vote, but with the establishment of the empire it was displaced by Napoleon III who preferred to have the deputies chosen from small single-member districts for the good reason that it greatly facilitated his notorious policy of interfering in the elections in the interest of the government candidates.[3]

The national assembly which framed the present constitutional laws of France was elected by "scrutin de liste" and the commission of thirty to which was intrusted the task of framing a constitutional *projét* reported in favor of this system, but the famous amendment of Lefèvre-Pontalis providing for the system of "scrutin d'arrondissement" was preferred by a small majority of the Assembly and it became Article 14 of the Constitutional law of November 30, 1875.[4]

[2] See historical summaries in Benoist, *La Réforme Électorale* (1908), p. 121, and the *Revue du Droit Public*, etc., vol. 25, pp. 183–194.

[3] For discussions of the methods which Napoleon employed to control the elections see Lefèvre-Pontalis, *Les Lois et, les Moeurs Électorales* (1885), pp. 61–140; Jules Ferry, *La Lutte Électorale en 1863* (1863), pp. 3–104 (valuable illustrative documents appended); and Weil, *Les Elections Legislatives Depuis 1789* (1895), ch. ix.

[4] For the history of this amendment see Magne, *Étude sur le Scrutin de Liste et le Scrutin Uninominal* (1895), p. 38, and Chardon, *Réforme Électorale* (1910), p. 63.

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For the most part the Republican members of the national assembly favored the "scrutin de liste" method for it was they who had suffered most from the exploitation by Napoleon III of the "scrutin d'arrondissement" system during the second empire. For the opposite reasons the Monarchists opposed it. Notwithstanding the opposition of the Republicans to the "scrutin d'arrondissement," the first elections (1876) after its introduction were distinctly favorable to them. To their surprise they elected twice as many deputies as the Conservatives did and at the elections of 1877, following the dissolution on account of the *Seize Mai* crisis, their majority was still further increased. But the attempt of MacMahon to carry by intimidation, promises and corruption, the elections of 1877, an attempt which was facilitated by the smallness of the electoral circumscriptions, intensified the republican preference for the system of election by general ticket from larger districts. Gambetta put himself at the head of the movement for the reëstablishment of the "scrutin de liste" and on the twentieth of May, 1881, he denounced from the tribune the single-member district method of choosing deputies as the "last fortress of the Monarchists" and referred to the chamber elected by this system as a "miroir brisé" in which France did not recognize her own image. Moved by Gambetta's eloquence the chamber passed a bill making the department the electoral circumscription and providing that all the deputies to which each department was entitled should be chosen at large on the same ticket. But the bill was rejected by the senate in which Conservative influence was still predominant. Gambetta having in the meantime become president of the council, put at the head of his program a proposal for constitutional revision which included among other things the "scrutin de liste" system of electing deputies, but on this question the government was defeated and his ministry resigned. Toward the end of the year 1881 Gambetta died and with his passing the system of "scrutin de liste" lost its most eloquent and tireless defender. At the same time, singularly enough, his death opened the way for the success of the reform which he had long advocated, because his great popularity had aroused no little jealousy among his repub-

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lican colleagues, some of whom professed to believe that he had dictatorial designs, in which case the enlargement of the electoral districts would facilitate the employment of the plébiscite for such purposes, as it did a few years later at the time of General Boulanger's ascendancy. This fancied danger now removed by Gambetta's death, the chamber proceeded (1885) by a practically unanimous vote to adopt the reform for which Gambetta had pleaded with so much eloquence during his lifetime and upon which it had overthrown his ministry in 1881.

The first elections under the new law took place in October, 1885, and the results were disappointing to those Republicans who had expected to see the reactionary element eliminated from the chamber. To their astonishment 200 Conservatives and Reactionaries were elected, thus regaining all the ground they had lost in 1877 on account of the popular revolt against MacMahon's policy. The dissatisfaction of the Republicans was soon intensified by the plebiscitiary successes of General Boulanger. This picturesque and extraordinarily popular man having been compulsorily retired from the army, conceived the idea of posing as a saviour of France and of taking a *plébiscite* of the country. Securing an election to the chamber he would occupy the seat until a vacancy occurred in some other department, whereupon, he would become a candidate for the vacant seat. As the department instead of the arrondissement was the electoral circumscription, the task of appealing to France was greatly simplified for he had only to carry a few of the larger departments to be able to claim that he had the endorsement of the nation. His election in the department of the Seine in Janary, 1889, when he received 244,149 votes against 162,414 for the Radical candidate, greatly alarmed the Republicans aud they made haste to pass a bill reëstablishing the system of "scrutin d'arrondissement" (February, 1889) and the senate promptly gave its concurrence by a large majority.

Thus the system of "scrutin de liste" after a single trial was done away with by the same parliament that had established it, not so much because of objections of principle, but because it facilitated the designs of a would-be-dictator. An interesting fact

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in connection with the history of this question was the change of opinion which took place among the Republicans in respect to the merits of the two methods of election. In 1885 they voted almost solidly against the single member district method; in 1889 most of them voted for its reëstablishment.[5] The restoration of the system of "scrutin d'arrondissement" enabled the Republicans at the elections of 1889 to regain the seats they had lost in 1885 and their majority was still further increased in 1893, a reapportionment law having been passed in July of this year providing for a more equitable distribution of seats.

Notwithstanding these facts the old Republican tradition that the system of "scrutin de liste" was more in harmony with their principles continued to persist and in a few years a new agitation for the reëstablishment of this system was well under way. Most of the projects laid before Parliament after 1895, however, proposed to combine the general ticket method with a system of proportional representation to be discussed hereafter.[6] The system of "scrutin de liste" with proportional representation was the subject of serious discussion in the Parliament for the first time in 1902 when it was strongly combatted by Waldeck-Rousseau, president of the council, who affirmed that it would lead to a further splitting up of the already numerous political parties of France and who denounced as sophistry the contention that minorities were unrepresented under the system of "scrutin d'arrondissement." In 1906 a commission on universal suffrage with Charles Benoist as president was created by the chamber to study the various projects for electoral reform and in 1907 it submitted a report through M. Flandin strongly advocating the adoption of a system of proportional representation, and this was followed two years later by a supplementary report prepared by M. Varenne.

[5] Of the 232 Deputies who voted in favor of "scrutin de liste" in 1885 only 85 voted to retain it in 1889.

[6] It should be remembered that the system of 1885–89 was what the French call "scrutin de liste" "pure and simple," proportional or minority representation constituting no part of the scheme. The result was to give to the majority party in each department all the deputies to which the department was entitled.

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The Briand ministry in 1909 placed electoral reform at the head of its program and it was M. Briand, speaking at Perigueux the same year, who referred to the arrondissements as "stagnant seas" as Gambetta in his day had called the system a "broken mirror." In November the chamber of deputies passed an electoral reform bill after some three weeks of debate. The first part of the proposition, that the chamber of deputies should be elected by "scrutin de liste," was adopted by a vote of 379 to 142; the second part, that the deputies should be elected according to a system of proportional representation was adopted by a vote of 281 to 235. At this juncture, Briand caused no little astonishment by declaring that the government could not accept the bill because the country was not ready for it. Moreover, he contended, the problem of electoral reform should be connected with that of administrative reform and the two worked out together.[7] He asked therefore that the matter be deferred until an opportunity should be had for consulting the electors on the question. The government having raised the question of confidence the chamber thereupon rescinded its action by a vote of 291 to 225.

This was the situation when the parliamentary elections occurred in 1910. As has already been stated, the question of electoral reform, was a leading if not the paramount issue in the campaign and it was widely discussed by the candidates and the press. Of the 597 deputies elected, 134 had declared themselves in favor of electoral reform without specifying the nature of the reform desired; 223 had expressed a preference for proportional representation; 50 had demanded the introduction of the system of "scrutin de liste" without proportional representation; while only 50 were declared partisans of "scrutin d'arrondissement."[8] A large number of deputies who had voted against the electoral reform bill in 1909 failed of reëlection. Of the popular vote only 1,652,522 out of a total of 8,517,143 were cast for candidates who

[7] Faure, "La Legislature qui Finit et la Reforme Electorale" *Rev. Pol. et Parl.* v. 62, p. 433.

[8] *Programmes, de Foi et Engagements Électoraux*, cited above. See also Groussier's *Rapport*, No. 826 Ch. des Deps., 1911 p. 3, and *Le Temps* for May 24, 1910.

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were in favor of leaving the existing electoral system untouched.[9] With this mandate from the electorate, the Briand government could no longer plead uncertainty as to the popular demand and in June 1910 it laid before the chamber a new bill embodying the principles of "scrutin de liste," proportional representation and a six year tenure for deputies. The debates began in the chamber in the spring of 1911 and in July, 1912, this electoral reform bill passed the chamber by a large majority, the success of the measure being mainly due to the vigorous and energetic support of the president of the council, M. Poincarè. But the senate commission to which it was referred reported adversely upon the bill in 1913 thus causing the resignation of the Briand ministry and an indefinite postponement of further consideration of the question.

II. "SCRUTIN DE LISTE" AND "SCRUTIN D'ARRONDISSEMENT" COMPARED

We may now consider in turn some of the more important objections that are today being urged against the "scrutin d'arrondissement" system of choosing deputies in France. First of all, it is said to be responsible for the steady decline in the character and intellecutal *niveau* of the chamber. Instead of resulting in the election of deputies with large views—men who regard themselves as the representatives of the country as a whole—it leads in practice to the election of small politicians with narrow horizens, *deputés de clocher*, who consider themselves merely as the political agents of their petty circumscriptions. It has come to pass that national party programs, issues and principles play little part in French parliamentary elections, the choice of the deputy being determined mainly with reference to local or personal considerations.[10]

[9] For the statistics see Groussier's *Rapport sur l'election des deputes*, etc., p. 4. Also J. L. Bonnet's *Report to the 10th Cong. of the Rad. and Rad. Soc. party*, 1910, p. 2; and Tronqual, *La Répresentation Proportionnelle*, 1910, pp. 60–61.

[10] Chatelier (*Réforme Republicaine*, 1911, p. 94) emphasizes this point and declares that the "scrutin d'arrondissement" method of election has made the chamber a body of mediocres. See also Moreau, *Pour le Régime Parlementaire*, 1903, p. 319; Des Champs *Le Malaise de la Democratie*, 1899, p. 51; Chaudordy *La France en 1889*, p. 89; Goblet in the *Revue Politique et Parlementaire* for 1905, p. 254 ff.; Buisson,

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The rôle of the French deputy is today largely that of a sort of *chargé d'affaires* sent to Paris to see that his constituency obtains its share of the favors which the government has for distribution.[11] Instead therefore of occupying himself with questions of legislation of interest to the country as a whole he is engaged in playing the rôle of a mendicant for his petty district. He spends his time in the anterooms of the ministers soliciting favors for his political supporters and grants for his arrondissement.[12] The ministers being dependent upon the support of the deputies naturally desire to keep on good terms with them, the importance of which is all the greater in France because the ministerial tenure is very brief and uncertain.[13] Under such con-

La Politique Radicale, 1908, pp. 137 ff.; Fouillée, *La Democratie Politique et Sociale*, 2 ed. 1910, pp. 25 ff.; Poincarè, *Questions et Figures Politiques*, 1907, pp. 95–103; Hilleret, *La Réforme Électorale*, 1910, pp. 15 ff.; Cloarec, *La Réforme Électorale*, 1911, p. 5 ff.

[11] M. Scherer, *La Democratie en France*, pp. 35–36, remarks that so great is the feeling that the deputy must look after the local needs of his constituents that they sometimes call upon him to procure Parisian nurses for their families; others write letters describing their physical ailments and requesting him to consult a medical specialist at the Capital for them. One deputy declared that he received an average of two letters of this kind every day during his term. Some want appointments as venders of tobacco; others charge him with doing their shopping, etc.

[12] Reinach, *Du Rétablissement du Scrutin de Liste*, p. 21.

[13] The actual relation between the deputy and his constituents and between the deputy and the minister is well described by M. Sabatier in an article in the *Revue Politique et Parlementaire*, for November, 1911, pp. 201 ff. The existing parliamentary régime, he says, is a counterfeit. Its true name should be "deputantism." Between a ministry which does not desire to be overthrown and deputies who wish at all hazards to be reëlected, an accord is soon entered into. The deputies promise the ministers the necessary votes of confidence and a free hand in the administration of the government. In return the ministers agree to appoint the friends of the deputies to office, give them decorations, and advance their supporters who are already functionaries. Thus the deputies surrender their control over the ministry and the ministers abdicate into the hands of the deputies their power to appoint, and control the functionaries. "The ministers are dependent upon the deputies," says Moreau, "and the deputies upon the electors and the electors are more concerned with local interests than with the general interests. . . . The deputy desirous of retaining his seat occupies himself with local interests, harasses the ministers, enters into deals with them; the ministers absorbed with this traffic are prevented from considering weighty affairs of state." *Pour Le Régime Parlementaire*, p. 319.

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ditions the deputy has become the political master of his circumscription; he dictates appointments and promotions, the conferring of decorations and the distribution of local favors generally. He speaks of "my arrondissement," as though it were his fief and of "my prefect" as though this official were his vassal.[14]

Many French writers have dwelt upon the subjection of the deputy to the tyranny of local influences, the consequent loss of his independence and the abasement of the character and ability of the chamber as a whole. M. Scherer in his study of the French democracy,[15] remarks that a deputy has hardly crossed the threshhold of the *Palais Bourbon* before he begins to lay plans for the strengthening of his position with his constituents in order to secure a reëlection. This is the one preoccupation that dominates his whole official life, colors his opinions and determines his votes. First of all, he must make himself the master of his district; he must look after the local interests and see that appropriations are made for local railroads, public fountains and monuments, repairs for the churches and pictures for the altar; he must listen to the solicitations for office from his friends and their friends; he must make promises and what is more difficult he must see that they are fulfilled.[16] Speaking of the *esprit de clocher* and the dependence to which the deputy has been reduced, M. Poincaré, now President of the Republic, observes: "Before a parliament composed of members thus paralyzed, the government itself is afflicted with a sort of ataxia. There is between it and the deputies as between the deputies and the electors a constant mutuality of services. The government distributes daily nourishment to the arrondissements: appointments, subventions and decorations. The deputies in return, at the time of the balloting, bring to it those little rectangular cards upon which is inscribed the fate of cabinets. *Do ut des, do ut*

[14] Chantovine, *En Province*, 1910, p. 11.

[15] *La Democratie en France*, pp. 25–36.

[16] Henry Leyret, in several interesting books, has dwelt upon the baneful effects of the present system of electing deputies; of the rôle which they play as political masters of their districts; and of the petty local influences to which they are subject. See especially his *Tyrans Ridicules*, 1910, pp. 15 ff.; his *La Republique et les Politiciens*, 1909, and *La Tyrannie des Politiciens*, 1910.

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facias. The Ministry which should be bold enough to withdraw from the conditions of the bargain would be quickly removed from the realm of reality. At the present time the chamber of deputies is not only the *mirroir brisé* of which Gambetta spoke; it is a body which too often reflects the tyrannical wills of a few provincial committees interposed between the people and their representatives." "The notion of the general interest," he says, "is more and more obscured in the minds of a large number of electors; individual appetites have become aggravated; people formerly the most honest and incorruptible, accustomed to favors have contracted the debasing habit of mendicity, ... deputies condemned to be merely the humiliating agents of the electors carry on their shoulders the weight of ancient servitudes. Forced to isolated struggles in their petty circumscriptions against adversaries who are never disarmed, always menaced in their unstable positions, always uncertain by reason of the precariousness of their victories, they have sought to rally and maintain their majority by the most natural means which are open to them, namely facile promises, personal services, official distinctions and administrative aids. . . . . The first condition of relief is to cut the "bandalettes" which bind the deputy to his arrondissement and give him the freedom of respiration."[17]

In the second place it is asserted that the election of deputies from larger districts will diminish the evil of government interference in the elections, for the reason that the larger the district from which the deputy is chosen the more difficult it will be to influence enough voters to affect the result. Choice from petty circumscriptions, in each of which the government has numerous functionaries who serve it as electioneering agents, thanks to the centralized administrative system, naturally facilitates the control of the government over the elections. "Government *pres-*

[17] "Vues Politiques," *La Revue de Paris* (1910), v. 18, p. 849–851. For further criticism of the scrutin d'arrondissement, see an article by "X" entitled the "Sophistication du suffrage universel" in the *Revue des Sciences Politiques*, 25, 344–363; Bonnets, *Report to the 10th Radical Congress*; Ferneuil, "La Réforme Électorale et le Parti Progressiste," in *Rev. Pol. et Parl.* 40: 507 ff.; "*Rev. du Droit public*, 25, 183–194; art. by Goblet, *ibid*, 32: 417–430; *Rev. Pol. et Parl*, June, 1902, pp. 418–432; July, 1905, pp. 5–13.

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sur" in the elections is an old practice in France, it having been particularly notorious under the second empire. Since the establishment of the third republic the methods of the empire have never been resorted to with the same openness and on the same scale, except perhaps, by MacMahon at the time of the *Seize Mai* crisis in 1877. Nevertheless, the Republicans, while respecting appearances somewhat more scrupulously than the Monarchists did, have rarely hesitated to employ the influence of the government, in close contests, to defeat its adversaries and to secure the return of friendly deputies. Generally professing a benevolent neutrality, the government sometimes goes to the length of instructing the prefects on the eve of an election to abstain from all participation in the campaign, but such orders are intended largely for appearance' sake and are not expected to be obeyed.[18] Candidates favored by the government are no longer openly presented as "official candidates" to the voters by means of notices printed on white paper—reserved in France for official purposes only—accompanied by letters of recommendation from the government or even from the chief of state himself, as was a common practice during the second empire, but there are other ways of making known the preferences of the government and of exerting an effective pressure upon the electorate.[19] Sometimes the voters of a poor and impecunious circumscription are given to understand that in case the government candidate is not elected they need expect nothing in the way of grants for local improvements or favors in the form of appointments or decorations. No pressure could be more effective than threats

[18] An illustration of the possibilities of government intervention was afforded by the election of 1885. The government at first instructed the prefects to abstain from all activity in behalf of particular candidates. At the first balloting the reactionaries elected 177 deputies and the republicans only 131, leaving 266 seats to be filled at the second balloting. The government, greatly alarmed at the prospect of being left in the minority, hastened to give the prefects new instructions and the result was the election of 241 republicans and only 25 monarchists at the second balloting.

[19] "Forty years," says M. Picot, "have separated us from the white placards (posters used by the government during the second empire for making known to the voters its candidates) but the official candidature has lost nothing but its etiquette." *Revue des Deux Mondes*, 1906, p. 542.

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of this kind, especially in the rural communes, which are notorious for their mendicancy.[20] Whenever the reëlection of an influential deputy is desired by the government it not only makes lavish promises to his constituency, but it makes known its desires to every functionary in the arrondissement from the prefect down to the school-teachers, tobacco buralists, letter carriers and road overseers, all of whom are expected to use their influence in his behalf. Many of these functionaries owe their appointments in fact to the local deputy and they are largely dependent upon him for their advancement.[21] Consequently they are vitally interested in the election of a deputy who enjoys the favor of the government. A common argument which one hears in France today in favor of the abolition of the offices of prefect and subprefect, is that these officials are electioneering agents before everything else.[22]

Whether the enlargement of the electoral circumscription will do away with the abuse of government interference in the elections may be seriously doubted. It may render the practice less easy and less efficacious but it will not remove the source, which is to be found in the centralized character of the administrative system and the somewhat low state of French political customs and morality. The truth is, public sentiment in France, to a large extent, tolerates the practice somewhat as public opinion in the

[20] Compare Lefèvre-Pontalis *Les Lois et les Moeurs Électorales*, pp. 47, 97; see also his *Les elections en Europe a la Fin du* XIX *Siècle*, ch. I.

[21] The *Temps* of November 28, 1912, speaking of the subprefect remarks that "it is no secret today that the subprefect owes his appointment to the deputy and counts on his influence to secure promotion. How, under such circumstances could he fail to be devoted to the interests of his master? Political agent of the government, the protégé of members of parliament he will pass his life in serving them and in being served by them."

[22] Jéze, *Elements du Droit Public et Administratif*, 1910, p. 138. It is a saying in France that a good prefect is one who makes a good electioneering agent and a good minister of the interior (the minister who appoints and controls the prefects) is one who successfully carries the elections for the government. Indeed the selection of this minister is often made with reference to his qualifications as a manager of elections (cf. Leyret *La Tyrannie des Politiciens*, p. 115). M. Leyret tells of a prefect who in 1906 not only prepared the electoral placards of a certain candidate but wrote articles in his behalf each day for two newspapers. (*Ibid.*, p. 124).

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United States tolerates appointments and removals for political reasons. All governments in France, irrespective of party, have resorted to it, some less openly, to be sure, than others. It always has existed, says M. Faguet, and always will exist.[23]

A third argument advanced in favor of the system of "scrutin de liste" is that it will do away, in some measure at least, with the gross inequalities of representation due to the existence of so many petty electoral circumscriptions. The electoral law of 1889 provides that each administrative arrondissement shall elect one deputy for every 100,000 inhabitants and an additional deputy for each fraction thereof, and that each arrondissement, irrespective of its population, shall have at least one deputy. The moment therefore, the population of an arrondissement passes 100,000 it is entitled to an additional deputy. It thus happens that the circumscription of Barcelonnette in the department of the Basses-Alpes, with a population in 1910 of 13,648 inhabitants elects one deputy, while the first circumscription in the department of the Seine with a population of 112,098 elects but one. Twelve circumscriptions with a total population of 269,977 inhabitants elect twelve deputies while twelve others with an aggregate population of 1,221,160, or nearly five times as many inhabitants, elect only twelve.[24] It is also a subject of complaint that the basis of representation is the total population instead of the number of voters, the effect of which is to give those districts which have a large foreign population representation out of all proportion to the number of voters. Thus according to the census of 1906, the arrondissement of Briey had a population of 100,525 and therefore elected two deputies although 27,000 of the inhabitants, or 26 per cent of the total, were aliens without the franchise. The same situation exists in the arrondissement of Nice where

[23] *Problèmes Politiques du Temps Present* (1900), p. 27.

[24] Professor Moreau, in his *Pour le Régime Parlementaire* (p. 294), speaks of the unjustifiable curiosities of a law which allows 100,000 people in one community a deputy and a few thousand somewhere else a deputy; which allows 20,000 electors to chose a deputy here and 2,000 to chose one somewhere else; and which produces a parliament that does not represent a majority of the voters of the country.

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more than a third of the population is alien. It thus happens that whereas Briey with 22,877 voters elects two deputies and Nice with 31,183 elects three, there are nine other circumscriptions each having more than 31,000 voters but each of which elects only one deputy.

Not only do gross inequalities exist in respect to the population of the electoral districts but also in regard to the representation of the different departments. Thus the Basses-Alpes in 1906 had a population of 113,126 and elected 5 deputies, the Ariège with 205,684 elected three; the Var with 324,638 elected four, that is, with nearly three times as many inhabitants as the Basses-Alpes it elected one deputy less.[25] These statistics furnish the basis for the contention put forward by the advocates of electoral reform that the chamber of deputies has ceased to be a body which represents the electorate of the nation. In 1910 a deputy was called to order by the President of the chamber for asserting that the chamber at that time represented only 4,500-000 electors out of a total of 10,00,000, but in a sense he was stating a fact. According to statistics presented by MM. Aynard and Paul Deschanel in 1909 an average of 55 per cent of the electors of the country were unrepresented in the chamber during the period from 1876 to 1906. The present chamber, elected in 1910, is said to represent exactly 43.4 per cent of the electors of France.[26] The following table from a report made by M. Flandin shows the number of electors actually represented by deputies of their own choosing and the number unrepresented since 1876:

[25] For discussions and statistical tables regarding the existing inequalties of representation, see Chardon p. 12–13; Magne, pp. 82–86; Clement, *La Réforme Électorale*, pp. 9–14; Roszner, "Le Suffrage Universel en France," the *Revue de Hongrie*, July, 1912; Groussier's *Report*, cited above pp. 199 ff.; Marquart "Comment Nous Sommes Representées," in the *Journal de la Societie de Statistique de Paris*. 1905; Tronqual, pp. 75 ff; Hilleret pp. 18–19; Bonnet's *Rapport*, pp. 248 ff. See "Lectures Pour Tous," April, 1902, for a popular and suggestive article entitled "*Les Français sont-ils Egaux devant le Bulletin de Vote?*"

[26] *Rapport* par A. Groussier fait au nom de la Com. du Suff. Universel sur l'Election des Deps., etc., 1911, No. 826, p. 11.

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Year	*Votes received by deputies elected*	*Voters unrepresented*
1876	4,458,584	5,422,283
1877	5,059,106	5,048,551
1881	4,567,052	5,600,000
1885	4,042,964	6,000,000
1889	4,526,086	5,800,000
1893	4,513,511	5,930,000
1898	4,906,000	5,633,000
1902	5,159,000	5,818,000
1906	5,209,606	6,383,852
1910	5,061,271	6,598,288

From the above table it appears that but one chamber, that of 1877 (exceptional because of the sixteenth May crisis), was composed of deputies who represented a majority of the voters, that is, deputies who had received a majority of the votes cast, and in this case the majority was insignificant (11,000). It is a cause of constant complaint by the electoral reformers that as a consequence of this illusory system of representation important laws are frequently voted by parliamentary majorities which represent only a minority of the voters. Thus the law of 1905 for the separation of church and state was passed by the vote of 341 deputies who represented exactly 2,647,315 electors out of a total of 10,967,000.[27] Similarly the chamber which voted the law against the religious congregations represented only 2,993,812 electors out of 11,219,992 and the majority which overthrew the Dupuy ministry in June, 1890, represented only a minority of the electors.

Still another argument in favor of the system of "scrutin de liste" is that its introduction will open the way for administrative reform for which there is a crying need and a wide spread popular demand in France and which, next to electoral reform, was the most widely discussed question of internal politics in the elections of 1910.[28] So long as the deputy is elected from a petty district of which he is the political master and whose control is maintained largely through a distribution of offices and honors,

[27] Duguit, *Droit Constitutionnel*, 1911, vol. 1, p. 380.

[28] See Fouquet, *Programmes et Engagements Électoraux*, Paris, 1911, pp. 22 ff; also Demartial, *La Réforme Administrative*, Paris, 1911, p. 73.

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the popular demand for decentralization and the abolition of useless offices will naturally not be regarded with favor by the chamber.[29] For example, there is a strong popular demand in France for the abolition of the sub-prefectures; the prefectural councils and of various other administrative posts the incumbents of which have few duties, but the deputies have shown little real sympathy for the proposed reform for the evident reason that it would mean the surrender of an important source of their political power. Their attitude has been exactly similar to that of our own representatives in respect to the abolition of useless customs districts.

Such are the principal arguments in support of the system of "scrutin de liste." The "arrondissementers," although considerably in the minority in the Chamber are by no means inactive. The argument that the intellectual *niveau* and the breadth of view of the deputy will be improved if elected from larger districts, rests, they say, upon opinion rather than upon knowledge or experience. The chamber chosen in 1885 according to the "scrutin de liste" method was not superior in character, ability,

[29] "Under the system of scrutin d'arrondissement," says M. Raymond Poincarè, "the deputy enters the chamber with chained feet. He cannot take a step without hearing the noise of chains which reminds him of his slavery. He desires to be the representative of France; but he is the courtier of an arrondissement. Ask him for administrative or financial reform; propose to him a law for the public interest and he will turn toward his petty 'chef-lieu' an interrogating look and an anxious thought. Perhaps he will consent to abolish for twenty-four hours the sub-prefectures because he knows with certainty that tomorrow the government will demand with insistence their immediate reëstablishment. But you must not expect him to sacrifice for the good of the country an unoccupied 'guarde generale' or a sleeping tribunal." "Vues Politiques" in the *Revue de Paris*, vol. 17 (1910), p. 849.

"Why is it," asks M. Hilleret, "that there are in France today prefects who administer nothing, judges who decide only 20 or 30 cases a year, collectors and other functionaries who have little or nothing to do." The answer is, the deputy needs this patronage to maintain control of his petty circumscription—*Réforme Électorate*, p. 21.

It is true that for some years past the chamber has with a few exceptions annually stricken from the budget the appropriation for the maintenance of the sub-prefects, but each time, upon the demand of the government, the amount has been restored. See the speech of M. Pierre Leroy-Beaulieu in the chamber, November, 30, 1911, *Journal officiel*, p. 3140; also the *Temps* for November 28, 1912.

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or largeness of horizon to those that have been elected according to the system of "scrutin d'arrondissement;" it left no record of achievement in the way of constructive or reform legislation; all the great legislative reforms of the Third Republic have been the work of parliaments elected by the single member district method.[30] Again, the "arrondissementers" point out that the election of deputies from the department at large would establish a gross inequality of power among the voters of different parts of France. Thus under the system of "scrutin de liste" as introduced in 1885 a Parisian voter had 38 votes (the number of deputies then elected from the department of the Seine) whereas the voter in Lozère and the other small departments had only three. If the same system were in force today the Parisian elector would have 50 votes. What is more important, as the advocates of the single member district method have shown, it would be impossible for any elector in a large department like the Seine which now elects 50 deputies to vote intelligently, for the reason that he would necessarily be ignorant of the qualifications of so many candidates.[31] Under such a system, moreover, the existence of close relations between the deputy and his constituents would be impossible.[32] Furthermore, election of the deputy from the department at large will not necessarily prevent him in fact from being the representative of a particular portion of the department. It will still be possible for deputies through understandings and agreements to partition the department among themselves so that each will be the representative of a

[30] Compare Breton *La Réforme Électorale*, pp. 13–15; Chardon, *La Réforme Électorale en France*, p. 277.

[31] It should be remarked however that the bill which passed the chamber in July, 1912, differed from the law of 1885 in that it provided for the division into smaller electoral circumscriptions of departments which elect more than seven deputies, so that no elector would be called upon to vote for more than seven candidates.

[32] To Professor Duguit this is an argument in favor of the system of "scrutin de liste." "The deputy," he says, "is not the agent (manditaire) of the elector, but of the country, and consequently there is no reason why either should be personally acquainted with the other; on the contrary personal acquaintanceship between them tends to make the deputy a mere commissioner of the elector and obliges him to pass his time in the ministerial anti-chambers soliciting places and favors." *Droit Constitutionnel*, vol. i, p. 376.

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small constituency, charged with the care of its particular interests and subject to the same local influences of which there is now so much complaint. Indeed, according to M. Poincaré this is what happened in 1885 when the system of "scrutin de liste" was introduced. Each former circumscription, demanded and obtained its own particular delegate to look after its own particular interests so that notwithstanding election from the department at large, each deputy was in fact the representative of a particular arrondissement. The old habits and practices, he adds, remained intact, electoral customs were not improved and the enlargement of the district was only a vain appearance.[33]

III. PROPORTIONAL REPRESENTATION

Finally the "arrondissementers" assert, what is of course true, that the single member district system does in fact insure a certain degree of minority representation since there are few departments in which a single party is able to carry all the arrondissements of which the department is composed, whereas under the "scrutin de liste" system, "pure and simple" (that is without proportional representation), the party having a majority in the department would, of course, elect all the deputies to which the department is entitled just as the majority party in a particular American State usually chooses all the presidential electors to which the state is entitled.[34]

[33] "Vues Politiques" in *La Revue de Paris*, April 15, 1910, vol. 17, p. 851. See also Ferneuil, "La Réforme Électorale," *Rev. Pol. et Parl*, vol. 59, p. 465.

[34] Thus in the department of the Seine the Radical and Radical Socialist party with 216,000 votes would elect the 50 deputies to which the department is entitled while the votes of the 197,000 Socialists *Unifiés* and those of the 188,000 Progressists, Nationalists, and Clericals would count for nothing, whereas under the system of proportional representation the Seine would today be represented by 12 Conservatives, 15 Socialists *Unifiés* and 23 Radical Republicans. J. L. Bonnet, in his report to the 10th Radical and Radical Socialist Congress of 1910, asserted that under the system of "scrutin de liste" pure and simple uncombined with proportional representation the republicans would lose more seats than they would gain, as actually happened in 1885 when more than 200 reactionaries were elected to the chamber. With this system in force the Republicans, he says, would have no representatives today from the departments of Loire-Inferieure, Maine-et-Loire, Morbihan, Calvados, Vienne and the other reactionary departments. According to another writer there are 25 departments in which the anti-government bloc would have the majority.

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For this reason there are today few advocates of the general ticket system uncombined with a scheme of proportional representation, such as that which existed from 1885 to 1889. Most of the electoral reform bills that have been before the parliament in recent years have provided for a combination of "scrutin de liste" with a scheme of proportional representation and it was in this form that the bill passed the chamber in July, 1912. Indeed the system of "scrutin de liste" is demanded first of all, because it is essential to a system of proportional representation.

Naturally the chief argument in its favor is that the existing majority system does not secure representation of the various currents of political thought and opinion in the country, at least not in proportion to the numerical strength of the parties which hold these opinions. The following table compiled by M. Dolory shows how the parties were actually represented in the Chamber in 1906 and how they would have been represented had the system of proportional representation been in force.[35]

Parties	*Actual No. of deputies*	*Proportional*
Reactionaries	85	127
Nationalists	29	37
Progressists	73	84
Radicals	214	186
Radical and Radical Socialists	108	82
Unified Socialists	51	47
Independent Socialists	20	12

According to this estimate the Reactionary and Conservative parties (the first three mentioned in the above table) would have gained 61 seats whereas the republican groups would have lost 66 seats. According to M. La Chesnais, the Radicals and Radical Socialists polled 26.94 per cent of the total vote and elected 33.26 per cent of the deputies. In 1902 they had 37 seats more than their voting strength entitled them to and in 1906, 76 too many.[36]

[35] Cited by Chardon, p. 210, and by Breton, *Réforme Électorale*, p. 82.

[36] "Les Radicaux et la Representation Proportionnelle," *Rev. Pol. et Parl.* (1906), vol. 50, p. 63. See also his "La Representation Proportionnelle et les Parties Politiques," 1904, p. 58.

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Naturally the attitude of the parties on the question of proportional representation has been determined largely by the probable effect which it would have upon their future—in short considerations of practical politics rather than principles have influenced their action in supporting or opposing the system. It is generally admitted that the Conservatives, including the Progressists and Nationalists, would gain by the establishment of a system of proportional representation and so they have uniformly supported the bills for its introduction. The Socialist *Unifiés* in their congress of 1906 endorsed the principle and adopted it as a part of their program although it is not quite clear that they would gain anything in the way of additional seats. The party known as the Action Liberale has also pronounced in favor of it. The Independent Socialists, however, are opposed and lately the Radicals and Radical Socialists in their congress have pronounced against it [37] although the party is badly divided on the question, many of its leaders being ardent supporters of the system.[38] On the electoral reform bill of 1909, which provided for the system of proportional representation practically all the Conservatives, Nationalists, Liberals, Progressists, and Socialists *Unifiés* voted in the affirmative; the Republicans were about equally divided while about 20 per cent of the voters of the Independent Socialists and of the Radicals and Radical Socialists were cast in favor of it.

The division among the Republicans is due to the feeling of uncertainty among them in regard to the effect which the system will have on their representation in the chamber. Many of them fear that the result will be a reduction of the number of deputies which they have under the present system and a strengthening of the conservative and reactionary forces in the chamber. They already have a safe majority, therefore, they argue, why take chances with a system which is certain to increase the strength of the opposition and may cause their own majority to disappear? That such will be the result, however, is denied by various writers. According to one of the most careful students of the question the parties would be represented in

[37] *Le Temps*, October 12 and 13, 1912.

[38] See Bonnet's *Report to the 10th Radical Congress*, cited above.

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the chamber as follows, under the system proposed by the bill which passed the chamber in 1912: Conservatives, 166, a gain of 14 seats; Socialist *Unifiés* who usually oppose the government, 62, a loss of 13 seats; and Republicans of various groups, 369 a loss of one seat; total 597.[39] So far as the strength of the Republicans is concerned these figures do not represent any change, their number of deputies at the present time being 370. Their majority over the Conservatives and Socialist *Unifiés* would still be upwards of 80; consequently they have nothing to fear from proportional representation.[40] Not only this, but, it is contended by many persons that the party will gain in stability, cohesion, and discipline, and be freed from the existing danger due to coalitions between the Socialist *Unifiés* and conservatives against the Republican candidates at the second ballotings. Since the Republican groups have an unquestioned majority in the country, they would always be certain it is contended of an equal majority in the chamber which is not now the case. They might lose a few seats but they would be assured of a consolidated, stable majority. For many years almost the entire vote of the Socialist *Unifiés* was thrown to the support of the radical candidates at the second balloting and this outside support was chiefly responsible for the radical majority. But in recent years the Socialist *Unifiés* have changed their tactics and in all the bye-elections that have occurred since the present chamber was elected (1910) they have thrown their support to the conservative or opposition candidates. Thus the radical majority has been put in jeopardy and its preservation intact is never assured under the existing system; the danger will be removed by the adoption of a system of proportional representation which will do away with second ballotings and bye-elections and thus prevent coalitions between the extreme parties.[41]

[39] Lavergne "La Réforme Électorale jugée au point de Vue de ses Resultats Statistiques," *Revue Pol. et Parl.*, January 1913, p. 80.

[40] That the radical party would be benefited by proportional representation is affirmed by La Chesnais in an article entitled "Les Radicaux et la Representation Proportionnelle," *Rev. Pol. et Parl.*, vol. 50. pp. 50–78.

[41] See on this point Bonnet's *Report;* Lavergne's article cited above; La Chesnias, *Representation Proportionnelle*, pp. 75–85; La Chapelle, "La discuss. du projet de Réf. Élect." *Rev. Pol. et Parl.*, May, 1912.

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IV. SECRECY AND LIBERTY OF VOTING; GUARANTEES AGAINST ELECTORAL FRAUDS

Parallel with the movement for the election of deputies from larger districts, and upon the basis of proportional representation, has been a widespread agitation for important reforms in the methods of electoral procedure. The law of November 30, 1875, governing the election of deputies, declares that voting shall be secret, but in fact it is scarcely less public than in Prussia where voting is by open voice. This is particularly true in the small rural communes where all the voters are personally known to one another.[42] The method of voting now employed in France was established in the early days of the second empire, (*Décret réglementaire* of February 2, 1852) and in many respects it is quite out of harmony with modern ideas of electoral procedure. To an American, much of it seems as antiquated as the idea of Montesquieu that voting should be public in order that the common people may be assisted and instructed by the more enlightened classes.[43]

The decree of 1852 provides that all ballots shall be marked *outside* the voting hall and that they shall be handed by the voters to the president of the electoral bureau (usually the Mayor), who shall deposit them in the urn. Ballots are not printed by the state as in the United States; each candidate furnishes his own ballot (so that there are usually as many varieties as there are candidates) and in practice they are often distributed by the candidate or his agents at the houses of the electors some days in advance of the election. The form of ballot is left to the determination of each candidate subject only to the restriction that it shall be of white paper and without any exterior signs or marks.

But in practice the secrecy which this requirement was intended to insure has proved quite illusory. The requirement

[42] This is the opinion of many writers and publicists, cf. especially, Pierre Leroy-Beaulieu, *Moeurs Electorales*, p. 3; also his address in the chamber of deputies, March 15, 1912 (*Journal officiel*, pp. 715 ff.); Fouillée *La Democratie Politique et Sociale en France* (1910) p. 50; and Moye, *Droit public*, p. 63.

[43] *Esprit des Lois*, Book I, ch. 2.

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that the ballot shall be prepared by the elector before he enters the voting room facilitates bribery, intimidation and the employment of other corrupt influences. It is a common complaint that candidates or their agents, employers, and labor union representatives impose their own ballots upon those who are more or less under their control, conduct them to the polling place, and see that the particular ballots put into their hands are voted.[44] This sort of coercion is still further facilitated by the absence of the American rule which excludes from the voting place all persons except election officials, properly designated watchers and the electors who are engaged in casting their ballots. In France all the voters of the circumscription may, so far as the size of the voting hall permits, remain in the room, electioneer and watch the procedure of voting.

Naturally the right of the candidates to furnish their own ballots and to distribute them in advance of the election, gives them an opportunity to exert a pressure upon the electors, such as candidates do not have in the United States where there is a single ballot containing the names of all the candidates, which is furnished by the state and is placed in the voters' hands only by an election officer and then only upon his entrance into the polling room.

The requirement that the ballot shall be of white paper and without any exterior marks or signs has been liberally construed by the courts. The decree specifies nothing as to the dimensions of the ballot or quality of the paper and of course the term "white' is relative and more or less indefinite. Every candidate naturally desires to have a ballot whi h may be distinguished from those of his opponents. The result is the ballots actually employed are of different dimensions, of varying shades of color, degrees of thickness, texture, grain, etc., so that they are easily

[44] Compare, on this point, Ruau, *Rapport sur le Secret et la Liberté du Vote*, etc., No. 1170. Ch. des Deps. 3. Ses. 1903, p. 6. Instances are alleged in which bodies of voters thus conducted to the polls were forbidden to put their hands in their pockets and of others who were required to dress especially for the occasion in clothes without pockets.

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recognized, particularly by the election officer who deposits them in the urn.[45]

The requirement that the elector must hand his ballot to the president of the election bureau instead of himself depositing it in the urn, gives this functionary a special opportunity for detecting the voter's choice and in case of doubt he may verify his suspicions by unfolding the ballot, which the law permits if he believes or professes to believe that the paper handed to him contains more than one ballot.[46] It is also alleged that this officer sometimes makes use of his power to deposit the ballot in the urn to mark surreptitiously the ballots of those whom he recognizes as voting against the candidate which he favors so that he may have an excuse to throw them out in the course of the count because of their exterior signs.[47] The candidates are not allowed to be represented by challengers or watchers of their own choosing during the balloting or counting, the result of which is that many votes are cast by persons bearing the electoral cards of dead men or absent voters [48] and there is also complaint that the mayor and his satellites who constitute the electoral bureau not infrequently utilize their opportunity to slip into the urn fraudulent ballots for their candidates. The counting of the votes takes place, not behind closed doors, as in the United States, but in

[45] Sometimes ballots are cut obliquely by the printer or a corner is clipped off or they bear the name of the trademark of the printer, or a cross, or a flower petal, all of which serve as identifying signs. See on this point an anonymous article entitled "La sophistication du suffrage universel" in the *Annals des Sciences Politiques*, vol. 24, pp. 461 ff.

[46] Cf. Roszner "Le Suffrage universel en France," *Revue de Hongrie*, July 15, 1912, p. 415. Waldeck-Rousseau speaking in 1901 declared that one only needed to pass a polling place to be convinced that the candidates for whom the votes were being deposited were clearly recognizable. *Annales des Ch. des Deps.*, 1901, ii., 1913. M. Ruau in his report of 1904 on secrecy and liberty of voting refers to the case of a mayor in one department (Garde) who was able to advise the government before the ballot box was opened of the number of votes received by each candidate.

[47] This unlawful marking is usually done by means of a short pencil concealed in the president's hand or by the dipping of his finger in ink or some substance concealed in his pocket and then impressing it on the ballot.

[48] Reinach, *Report on Secrecy and Liberty of Voting*, etc. No. 1674, Ch. des Deps., 1912, p. 3.

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the presence of noisy and excited crowds who sometimes gather around the tables for the purpose of intimidating the election officers.[49] Sometimes the lights are extinguished, the tables overturned and the ballot box made way with.[50] The president of the bureau is charged with the maintenance of order and the law empowers him to clear the hall in case of grave disorder. This functionary is often charged with provoking sham rows, after which the gendarmes are called in and the hall cleared, leaving the president and the assessors masters of the situation and free to fix the majority of their candidate at whatever size they see fit.

Measures to prevent abuses such as the above and especially measures to secure secrecy of voting have been the subject of frequent discussion in Parliament during the last ten years. The proposal that received most favor was that of voting under envelope as is the practice in the elections to the German Reichstag. The chief advantages claimed for envelope voting is that it would remove all possibility of identifying the ballot of any elector and would render impossible the surreptitious marking of ballots by the election officers for purposes of invalidation. It would also eliminate the abuse of ballot box "stuffing," at least by the voters. It has been opposed, however, for the reason that it would delay the process of counting and would involve a reflection upon the honesty of the mayors of France![51]

A second proposal was to require all ballots to be printed on uniform paper of identical dimensions, thickness etc., such paper to be furnished to the candidates by the state. This scheme

[49] The tables are so arranged during the counting that the voters may freely circulate among them.

[50] On these several points, see Charbonneaux, op. cit., 57 ff.; Moye, op. cit., pp. 60 ff.; Leroy-Beaulieu, op. cit.; Lefèvre-Pontalis, *Les Elections en Europe a la Fin de dixneuvième Siècle,*" 1902; also his *Lois et les Moeurs Electorales* (1885); Leyes, *Le Secret du vote* (1889); Bonnet, *Étude sur Le secret du Vote et les Moyens d'Assurer* (1901); Benoist, *Réforme Électorale,* Appendix, pp. 275–309; LaCroix "Le Secret du vote Devant le Parlement Francaise," *Rev. Pol. et Parl.*, 47, 307–320; Art. by "X", entitled "Le Sophistication du suffrage universel" in the *Annales des Sciences Politiques*, 24: 445–483; *Revue du Droit public*, 21, 125 ff., and 24, 126–127.

[51] Charbonneaux, pp. 74–75. For a review of the movement in favor of envelope voting, see Ruau's report cited pp. 10 ff., and Lintilhac's *Report on Secrecy and Liberty of Voting*, etc., No. 62, Senate, 1905, pp. 10 ff.

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would make the identification of ballots impossible but, like the method of envelope voting, it would not prevent intimidation and the use of pressure upon the electors, so long as they were required to prepare their ballots outside the voting room.

A third proposal contemplated a collective ballot furnished by the state and containing the names of all candidates, similar to the ballots used in the United States. This proposal was combatted in 1901 by Waldeck-Rousseau, then president of the council and, strange as it may seem to an American, it has few advocates in France today.

A fourth proposal was for the introduction of envelope voting coupled with provision for a voting booth (*Cabine d'isolement, isoloir*) in which the elector might retire for the purpose of preparing his ballot. This is the Belgian method and the one which has been adopted by the recent French law, to be described below. The proposal was first made the subject of extended discussion in the chamber of deputies in 1901, but was strongly combatted by Waldeck-Rousseau upon the ground that it would involve too great an expense to the communes and because, he said, the voting booth would become a "cabine de reflexion" and thus would cause delay in the voting, all the more so because of the French practice of going to the polls in organizations or groups.[52] Both of the objections were greatly exaggerated as American and Belgian experience has undoubtedly shown. During the past nine years the chamber of deputies has on six different occasions passed bills, sometimes by practically unanimous votes, providing for envelope voting, for the secret voting booth and allowing candidates to be represented at the polls by witnesses or challengers. At first the senate was willing to accept only the proposal for voting under envelope, but in 1906 it agreed to accept also the principle of the secret voting booth. It has steadily refused, however, to concur in a bill providing for witnesses or challengers.[53]

[52] Waldeck-Rousseau, *Politique Française et Etrangere*, 1903, pp. 41–45.

[53] Waldeck-Rousseau in 1901 vigorously opposed the proposal to allow candi- the dates to have representatives at the polls on the ground that it would "organize the battle at the urn."

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Finally, in July of the present year, the Chamber of Deputies being convinced that the Senate would never agree to a provision permitting candidates to have representatives at the polls, accepted the Senate bill providing for voting under envelope and for the *isoloir*. The law was promulgated July 29, and will go into effect November first of this year. The law provides that in all elections ballots shall be cast under envelope furnished by the prefectoral authorities; that they shall be opaque in character, shall bear an official stamp, and shall be of a uniform type for each electoral circumscription, that upon entering the voting place the elector shall be given an envelope, and without leaving the room he shall retire to to a *cabine d'isolement* so constructed that he cannot be seen and there he shall while thus concealed place his ballot in the envelope. This done, he deposits the envelope in the urn himself without the president's being allowed to touch it. This law will remove most of the evils complained of: intimidation and outside pressure, the identification of the ballots by election officers and bystanders, ballot box "stuffing," surreptitious marking of ballots by the president of the bureau—in short, it will insure full secrecy of voting. But it will not prevent voting under the names of dead men or absent voters or fraudulent voting in general, or fraudulent counting. It is announced, however, that the chamber will embody provisions for these reforms in a separate bill and will press upon the senate its passage at an early date.

In addition to the demand for more effective guarantees in the interest of secret voting and the free exercise of the electoral function, there has been much discussion of proposed legislation for the protection of the elections against corrupt and fraudulent practices. There is as yet no comprehensive law in France that may be compared to an English or American corrupt practices act, but only a few sporadic provisions prescribing penalties for bribery and similar electoral offenses.

First of all, there are complaints of fraudulent registrations and of registration lists which contain the names of dead men

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and of electors who no longer reside in the commune.[54] The registration lists are permanent in France, that is, the voter is required to register but once. To be sure, the lists are annually revised but as is usually the case where this system of registration prevails, many names remain on the list which are not entitled to be there. Not infrequently there are are as many or even more votes cast than the total male population over twenty years of age.[55]

The evidence submitted to the council of state in the contested election cases that have been before it leave no doubt that frauds are all too common, especially in the South of France and in Corsica, while in the colonies the elections are often farcical. In the city of Toulouse and in the department of Herault, election frauds have been quite notorious.[56] The old practice of "ballot box stuffing" is by no means unknown in France for we are told that in the elections of 1906, there were 196 districts in which more votes were cast than there were registered electors. It is widely asserted in France that the members of the electoral bureau and especially the president are the principal offenders. The assessors who sit with the president are in fact usually men of his own choosing and are often his pliant instruments. With their connivance, it is an easy matter for him to deposit fraudulent

[54] For examples of fraudulent registrations, see the speech of Pierre Leroy-Beaulieu in the Chamber, Feb. 29, 1912. *Journal Officiel* pp. 538 ff. Heretofore there has been no prohibition upon registration by the elector in more than one commune, but the new law passed in July of this year contains such a provision.

[55] Thus in the department of Ariége there are 74,788 electors on the registration list, whereas the total male population over 20 years of age is but 66,998; in the department of Tarn, the figures are 113,071 and 110,876 respectively. In one commune where the total population, including women and children was but 345, there were 350 registered voters.

[56] In Herault, M. Paul Leroy-Beaulieu the well known economist, was twice the victim of these frauds. See his brochure "un chapitre des moeurs Electorales en France, dans les années 1889 et 1890." More recently his son, Pierre, has had a somewhat similar experience. See his own account of how elections are held in Herault, in *Moeurs Electorales en France au XX^e Siècle* (Paris, 1902). M. Beaulieu recently related to me some of the ingenious methods employed in France to falsify the elections.

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ballots in the urn as often as he choses and to make the majority for his candidate as large as he pleases, and that this is frequently done, the evidence in contested election cases seems to leave little doubt. The existing legisation for the prevention of frauds of this and other kinds is therefore quite inadequate.[57]

[57] Concerning this insufficiency, see Delpech "Corruption et Dépenses Electorales," *Rev. du Droit Pub.* 22, 65 ff.; 23, 97ff.; 2 6, 314–331. By the law passed in 1902, heavy penalties were imposed upon election officers found guilty of fraudulent acts. The new law recently enacted increases these penalties and provides that in case the offender is a public functionary the penalty shall be doubled.

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NOTES ON CURRENT LEGISLATION

EDITED BY HORACE E. FLACK

Recent Ohio Legislation Conforming to the Demands of the New Constitution: Perhaps no Ohio general assembly has ever been charged with so much constructive legislation as the one recently recessed. In fact, its work was more of a re-constructing and re-adjusting nature, which made it the more difficult to do. A radical constitution to which to conform, a radical legislature, and a radical governor, who demonstrated his ability to handle a legislature and who had a definite program laid out and insisted on its fulfillment, all have conspired to give the Buckeye State, according to conservative minds, a taste of that which populism, in its wildest vagaries, never dared to dream.

In a previous number of the AMERICAN POLITICAL SCIENCE REVIEW, the present writer gave a list of the new amendments, which the people of the State approved on September 3, 1912, and thereby made a part of the organic law. It is the purpose of the present article to show the nature of the laws enacted and the changes made in existing laws to conform to the requirements of the amended constitution. Some of the amendments demanded no additional legislation to make them effective. In fact, one of the criticisms urged against several of the new clauses was that they left nothing for the legislature to do. Instead of dealing with fundamental, their provisions read more like statutory laws. But aside from this, not all the provisions of the changed constitution found expression in laws, for some have been deferred to the adjourned session of the legislature, which meets next winter. The reason for this was twofold. The assemblymen had already worked into the season of warm weather, and besides, there were some phases which required additional time and information. For these causes it was thought best to postpone action on certain clauses.

The first amendment, relating to trial by jury and permitting the enactment of laws whereby three-fourths of the jury in civil cases might determine the verdict, early in the session found form in statute.

Either party to the suit may demand a poll of the jury. If more than one-fourth of the jury answer in the negative, the jury must be sent

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out for further deliberation. If the disagreement of more than one-fourth of the jury be not expressed and neither party requires the poll of the jury or three-fourths or more of the jury answer affirmatively, the verdict is final.

Nothing was done relative to fixing the size of the grand jury or the number necessary to return a verdict. But the taking of depositions by the State in criminal cases was expressed in law by adding the phrase "or for the State" after that "for the defendant." Supplemental clauses to the General Code provide for the presence of defendant's counsel and the right of the accused to be face to face with the witness whose deposition is taken.

That part of the amendment referring to failure of accused to testify, and allowing the court and jury to consider, and counsel to comment upon such failure, found no expression in statute since the wording of the constitution was sufficiently specific.

The fourth amendment provided for the bringing of suits against the State. But the legislature, while passing much legislation pertaining to the organization of courts, failed to take cognizance of this amendment.

One of the new clauses in the constitution was the one relating to non-limiting the amount of damages recoverable for wrongful death. Under the old constitution the legislature exercised the right to limit the sum in such action to less than ten thousand dollars. To comply with this requirement necessitated only omitting such words as determined this limitation.

The initiative and referendum amendment to the constitution was so complete as to preclude the necessity of additional legislative enactments. However, a few laws were passed in reference to the carrying out the purposes of the constitution.

No money can be either given or accepted for signing an initiative or referendum petition; since municipalities are to have home rule in their governmental systems, the principals of the initiative and referendum are to obtain; statements are also to be made showing the cost of getting petitions signed. The most important of these laws was the one requiring the submission of publicity pamphlets by the state, county or municipality relative to measures submitted to the people.

One of the changes made in the constitution was that empowering each house of the general assembly to secure information along proposed lines of legislation; to compel the attendance of witnesses, and the production of records pertaining to alleged misconduct of assemblymen.

Unless the organization of the legislative reference bureau, whose

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powers and duties are advisory, can come within the scope of the provisions of the amendment, the clause went by default.

In the matter of limiting the veto power of the governor, no additional law was found necessary to secure its enforcement.

As a result of the mechanics' and builders' lien section, it was found necessary to enact a very comprehensive law covering the subject. This class of workmen are permitted a lien on every form of labor, including water craft, sidewalks, ditches, etc. Before the owner pays money to a contractor, he may demand a sworn statement signed by the contractor, sub-contractors, and all who furnished labor or material, that all claims had been fully met. There can be no right of action against the owner until such statement is furnished. Failure to provide such statement makes the contractor liable to the owner. Persons furnishing labor or material must notify the owner of the fact, and the probable amount which will be due them. The sub-contractor shall have priority of lien over the contractor, and the mechanics, laborers and those furnishing machinery, material or fuel, over the sub-contractor.

Closely related to the preceding section is the next one, known as the "employees' welfare clause." The purpose of this amendment was the permissibility of humane laws to improve the conditions of employment of men, women and children.

An employee on railways, interurban or street railways shall not be compelled to go on duty if he has labored for fifteen consecutive hours, unless he has had at least eight hours' rest.

No boy under sixteen and no girl under eighteen shall be employed, unless such child presents an age and school certificate. Even they are prevented from engaging in certain kinds of labor. This includes the hazardous occupations where danger to life and body is imminent and such other forms of employment where diseases might be acquired.

Wages to all employees, including farm hands, shall be paid semi-monthly.

The prevention of occupational diseases came in for a large share of attention. Devices, means and methods to prevent such diseases are to be furnished free by the employer. Special statutes for the protection of workmen in the lead manufacturies are particularly included. Among the devices to be supplied are working rooms with proper hoods and air exhausts to carry off fumes and dust, washing facilities with enamel basins and shower baths, dressing rooms, eating rooms, sanitary drinking fountains, clothing and respirators.

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Employees must likewise comply with the regulations for the use of the devices and submit to monthly medical examinations. The enforcement of the law is in the hands of the newly created industrial commission.

In addition to a former law which demanded the presence of seats for female employees, separate lunch rooms are required, and at least thirty minutes are to be given for the eating of the lunch. If no such rooms are furnished, an hour's time is allowed. No female is permitted to labor in the city more than ten hours a day or fifty-four in a week. This does not apply, however, to the manufacturies in perishable goods.

In line with the previous amendments was the one pertaining to compulsory workman's compensation. A law permitting optional workman's insurance was already on the statute books. The passage of the eleventh amendment made it mandatory. The new law was drawn along the lines of the old one, except that it is more comprehensive and the control of it has been taken from the state liability board of awards and given over to the industrial commission.

The only requirement to put the amendment relating to the "eight hour day" and the "forty-eight hour week" into operation was the statement that it should be unlawful to demand more hours and affix the penalty for its violation.

No new laws were enacted to conform to the amendment conferring upon the legislature the authority to conserve natural resources. While the "recall" of public officials was defeated in the constitutional convention, yet under the amendment whose purport was to strengthen the power of impeachment, the principle of the recall is found in a modified form. The law provides for the forfeiture of the office for misconduct. Proceedings for the removal of such officer shall be instituted upon the complaint of 6 per cent of the citizens if he is a state officer, and 20 per cent if other than a state officer. If a state officer is to be tried, the complaint is filed with the governor or the court of appeals of the district in which the officer resides. If other than a state officer, the charges are preferred before the common pleas court of the district in which the officer resides. The decision of the governor is final but that of the court is reviewable by the appellate court.

No cognizance seems to have been taken of the amendment by which courts would be given the power to name the "experts" in criminal cases.

The Torrens land title system is now in full operation as the result of the amendment permitting the enactment of laws for its adoption.

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The statute is comprehensive, and to the lay mind, complicated; it is doubtful if there will be a general use of the new plan of registering and warranting land titles. It is deemed unnecessary to discuss the system here and an enumeration of some of its features as applying to Ohio need only be mentioned.

The common pleas and probate courts have co-equal jurisdiction in all cases arising under the law. The county recorder has the active part of the work, except the examiners of title, who are appointed by the court and receive compensation for their services. The law proceeds to tell who may have title to land registered, what estates may be registered, how the application to register may be made, etc.

The amendment abolishing prison contract labor has brought about some radical reforms in the administration of the state's penal institutions. Prisoners are not to be farmed out any more; they may be employed in the manufacture of articles used by the State and its political sub-divisions, and the various institutions of the State, eleemosynary and educational. The prisoner receives credit for a part of his earnings, which may be applied to the support of those dependent on him. The result of this law has put prisoners on the highways and on public buildings now under construction.

No statute was required to fulfill the intention of the amendment which limited the powers of the general assembly in extra session.

While the change in the judicial system of the State was revolutionary as the result of the nineteenth amendment and while the laws controlling this department had to be revamped, yet the new features are fully explained in the text of the amendment. Briefly the changes effected are the addition of a chief justice to the supreme court and the changing of the old circuit court, which was a court of review and could only remand cases back to the common pleas court for re-trial, but now has final jurisdiction except in certain cases. The amendment itself was sufficiently succinct and the statutory revision comprised the elimination of old clauses rather than the addition of new ones.

The election of a common pleas judge in each county necessitated much legislation to re-adjust the districts and determine the beginning of the terms of office.

The laws called forth by the primary election amendment are extensive and complicated. In fine, all candidates, except those in municipalities of less than two thousand, are hereafter selected at primaries. Delegates and alternates to state and national conventions are similarly to be chosen. The only exception is that of presidential electors, who

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will be selected by the state convention. In this connection it might be pertinent to state that no longer will the voter be permitted to vote for a part of the electors. He makes but one cross mark and that counts for all. The reasons are manifest.

The state conventions in the future will be confined to platform erecting. In fact the old time convention has passed away. The time for the new convention is fixed by the State. Candidates for national conventions must file a sworn statement setting forth their first and second choice for President. Another new feature is the opportunity of a voter to express his preference for President and Vice-President. The law also controls the machinery of each party. It consists of the "state central committee," the "district committee," the "county central committee," the members of all to be elected by direct vote.

Relative to the election of United States senators, the law as passed was patterned upon the "Oregon plan." This has now been rendered obsolete by the ratification of the seventeenth amendment.

The machinery of the primary elections is in the hands of the secretary of state, who appoints the county boards. To meet the demands of the amendments referring to the organization of the boards of education and the more close administration of the educational interests of the State, laws were passed changing the commissioner of schools from an elective to an appointive office. His title has also been changed to that of superintendent of public instruction. Some of the new duties falling to his office are the establishment of schools for the deaf, blind and crippled. These are to be located where they are needed, and are founded on the application of some board of education. The maintenance of the school will be by the State. The principle of home rule is followed in the control of the schools in the cities. Much more would have been done along the educational lines, but for the chaotic condition of the Ohio mind pertaining to the educational policy of the State. To relieve this condition the legislature provided for a school survey commission, which is now investigating the various educational agencies. This commission will make its report at the special session to be called and no doubt the entire school code of the state will be rewritten. This promises to be an interesting feature of the coming session.

In accordance with the amendment permitting municipalities to insure in mutual insurance companies and providing for laws regulating rates charged, etc., a few laws were passed, strengthening the State's power. The term "gross premiums" is now defined for taxation purposes. It is to be the difference between amounts collected from policy-holders

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and that returned to them in payment of losses. Mutual insurance companies may under certain conditions change from the assessment plan to the level premium plan without capital stock.

It will be recalled that one of the amendments made state and municipal bonds taxable. The result of this has been to make bonds a drug on the market. Many municipalities were unable to float their issues and the legislature proposed an amendment to be voted on in November, repealing the former one.

The taxation laws of the State have undergone some vital revision. At the head of the system is the state tax commission which shall direct and supervise the assessment of all real and personal property. The State is divided into assessment districts, each county constituting such district. In the smaller counties a deputy state tax commissioner shall be appointed and in the larger ones, two. These deputy commissioners shall appoint their various subordinates, such as assessors, experts, clerks, etc. These officers are to find the taxable property and place upon it its true value. Much is yet to be done to perfect the taxing system of the State. The plan now being inaugurated is looked upon by a considerable number of people as somewhat experimental.

Illegitimate and indiscriminate stock jobbing got a hard blow when the legislature passed the "blue sky law," made possible by the thirty-third amendment. Ohio henceforth will be poor picking for the professional "promoter" with a "proposition."

All stock brokers must have a license issued by the state superintendent of banks, who is to be "shown" who the broker is, what he is selling and for whom. In addition the seller of stocks is liable to the purchaser if by some mis-statement of the facts, the latter was induced to invest his money in bogus paper.

General satisfaction is felt over passage of the amendment and the accompanying legislation permitting the inspection of "private banks." Genuine good has really come from the law. The celebrated "Murray bank" will become a type of this species of depositories, showing how lax they have been conducted. There must now be filed with the secretary of state a full statement of their business and before they can proceed that officer must be satisfied of their solvency. They are required to notify the world that they are "private" banks and "unincorporated." Reports must be filed and the laws of banking applied to them as to other bona fide banking institutions. In addition, these "private" banks can not be used as depositories for public funds.

After a desperate contest the liquor traffic was allowed to be licensed.

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The conflict was transferred from the public forum to the assembly. The fight centered about the nature of the license. Although the constitutional amendment was specific in its terms, yet there was an abundance of room for dispute in determining the details.

The control of the traffic will now be in the hands of a "state liquor licensing board," appointed by the governor. Each county in the State is made a licensing district. Those counties where liquor is permitted to be sold have appointed for them a county liquor licensing board, by the state board. This county board grants a license to such "moral" persons whom it deems worthy to conduct the traffic in accord with the statutes made and provided. Some of the folks who were debarred are the immoral, non-citizens of the United States, minors, the unsound minded, non-residents of Ohio, or persons interested in some other place where the beverage is sold.

There cannot be more than one saloon for every five hundred inhabitants and none are to be nearer than three hundred feet to a school building. One of the arguments for allowing them so near was the "moral influence the school would have on the saloon."

Before the board grants the license, the name of the applicant is published and opportunity given for the filing and hearing of protests.

Certain conditions are imposed on the dealer, a violation of which jeopardizes his license.

The thirty-seventh amendment made mandatory the passage of laws establishing the civil service. The resultant statute provides for the appointment by the governor of a civil service commission of three members. The civil service of the State, and its political sub-divisions are divided into the unclassified and the classified service. The former includes officers elected by popular vote, heads of departments appointed by the governor or mayor, commissioned and non-commissioned officers, teachers, elective officers, etc.

The unclassified comprise all employees in public service not belonging to the classified. These are divided into the competitive and non-competitive classes. The commission has authority to provide eligible lists, conduct examinations, make investigations to determine the efficiency, etc. The State is partitioned into districts and an officer is put in direct charge of the territory.

The last amendment to the constitution concerned municipal home rule for the cities. The text was explicit, but much remained for the legislature before its provisions could become operative.

The plan is briefly this: Ten per cent of the electorate can petition for the submission of the question to a vote. The ballot contains the

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name of the plan suggested. Copies of the plan are mailed to the voters. Any voter can write a three hundred word article, for or against the plan, and by paying for the printing have it included in the circular of information. After the adoption of the new form, an election of officers is held. No party emblems are permitted on the ballots. The names thereon are to be printed in series, thus changing the places of all the candidates' names. If the commission plan has been approved, three commissioners are elected in cities of not more than 10,000 inhabitants and five commissioners in all others. The powers of this commission are to administer affairs in accordance with general statutes governing municipalities.

The city manager plan consists of a council of five or more citizens. These constitute the governing body of such city with power to pass ordinances, appoint a city manager, fix salaries, etc. The city manager's duties are to conform to regulations of council, enforce laws, propose ordinances, prepare tentative budget, etc.

Under the federal plan, the mayor and council are elected. The mayor and heads of departments appointed by him constitute a board of control. The mayor is given the right of veto.

Any municipality which shall have operated for five years under any plan may abandon the same and adopt another form of organization. The initiative, referendum and recall are admissible in all plans of municipal organization.

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The Children's Code of Ohio: The children's code of Ohio was enacted at the recent session of the legislature in response to a demand which found expression in 1911 in the appointment of a commission to "revise, consolidate and suggest amendments to the statute laws of the State of Ohio which pertain to children."

The administration of this law is not placed in any new boards or commissions, supervision of all charitable and penal institutions being kept in the Ohio board of administration and the board of state charities. The former has "executive, administrative and fiscal supervision" of state institutions; while the latter must investigate by "correspondence and inspection" not only the public benevolent and correctional institutions of the State and county, municipal jails, work-houses, infirmaries and children's homes, as formerly, but under the new law must inspect private institutions, maternity hospitals or homes, and all institutions

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whether incorporated, private or otherwise, which receive and care for children. Moreover, no private children's home can be incorporated until its articles of incorporation have been passed upon by the board, and no child can be committed to an institution which does not hold a certificate of fitness granted by the board. It is made a misdemeanor to solicit money for an uncertified home.

Under the new code, state child-placing is made supplemental to the placing by county homes. The board of state charities may receive as its wards dependent or neglected children from the juvenile court, or with the consent of the court, from any children's homes or other institutions. They must place these wards in private homes, paying board when necessary. The traveling expenses in connection with such placement and half the board are, however, chargeable to the county. Parents must pay for maintenance of dependent children. The board is permitted to employ such visitors as may be necessary, not only to visit the institutions as formerly, but also to see that the institutions are visiting their placed-out children, and, if they deem it desirable, to visit the children themselves.

The new provisions relative to juvenile courts do not differ greatly from the old in most respects. The age limit of children coming under their jurisdiction is raised from seventeen to eighteen years; children are allowed to remain at home between time of arrest and trial upon written promise of any reputable person that he will be responsible for the child's appearance in court; physical and mental examination of children committed by the court is provided for, and separate quarters at institutions are required for children certified as having contagious or infectious diseases; persons abusing a child or contributing to his dependency or neglect are made subject to the same fine as persons contributing to delinquency; delinquent and dependent children, and girls and boys are to be separated in detention homes; children may be committed to the board of state charities as outlined above.

The act contains a provision for mothers' pensions modeled after the Missouri act. Mothers whose husbands are dead, disabled or imprisoned and are not contributing to their support and who have lived in any county of the state for two years are allowed fifteen dollars a month for the first child and seven dollars a month for every other child not entitled to an age and schooling certificate; provided that upon the examination of the home it is found that the children are living at home, that the mother is the proper person to care for them, that it is a benefit for them to be with her, that in the absence of such allowance the mother would

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have to work away from home regularly or the home would be broken up. No order making such allowance can be effective for more than six months, but may be renewed from time to time. Money for these pensions is to be provided for by the county commissioners, who may levy a one-tenth mill tax for the purpose.

The principal changes in regard to state reformatories are those allowing the state board of administration to transfer inmates between the different institutions. That a woman may have charge of the girls at the girls' industrial school, provision is made for a chief matron instead of a superintendent to direct the management of that institution. Girls paroled or indentured under contract of employment may be required to pay back not more than one-third of their earnings to the chief matron to be held in trust and paid them upon final discharge.

County children's homes are to be asylums for children under eighteen instead of sixteen years of age, but incorrigible and morally vicious children are prohibited. Physicians may be employed to make at least quarterly examinations, record of which must be kept. In counties having no home, the commissioners may contribute to the support of incorporated homes to be known as "semi-public homes."

Public schools must be open to all children in the county or district homes and institutions, but where it seems feasible, schools may be opened in the homes. These schools must fulfill all the requirements of the public schools in the same districts, and are placed under the control of the board of education of the district. Teachers must have "teacher's elementary school certificates."

Provision is made for medical inspection of every school in the state—not merely city schools—and such inspection is extended to cover teachers and janitors as well as pupils. Card index records of all examinations are required. Enforcement is placed in the hands of the state school commissioner and the state board of health.

The act raises the school age of children providing that no boy between the ages of fourteen and sixteen and no girl between the ages of sixteen and eighteen may be employed without having obtained a schooling certificate, although provision is made for special vacation certificates. Parents can with less ease obtain certificates upon false affidavits. Boards of education in cities may appoint juvenile examiners to test children desiring certificates. The chief inspector of work-shops and factories must be furnished lists of children to whom certificates have been issued.

In regard to child labor the law provides that no child working under

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a schooling certificate may work more than six days nor forty-eight hours in any week, nor more than eight hours in any one day, nor before seven in the morning nor after six in the evening. The presence of such child in any establishment during working hours is prima facie evidence of his employment. Special regulations as to hours are made for boys under eighteen years and girls under twenty-one. Neither boys nor girls may be employed in any dangerous or injurious occupation, and the state board of health is authorized to determine whether children shall be excluded from any trade or occupation not already forbidden by law.

ORRENA LOUISE EVANS,
Ohio Legislative Reference Department.

New Jersey Corporation Laws: These laws, seven in number, have attracted wide attention, not only because of their radical departure from general corporation legislation on the part of New Jersey, but also because of their being the administrative measures of Governor Wilson. Corporation lawyers who violently opposed the measures now admit that they contain nothing which unduly restricts legitimate corporation activity. The laws are clearly and concisely drawn. The first of them defines trusts and provides for criminal penalties and punishment against such combination in restraint of trade.

A trust is defined as "a combination or agreement between corporations, firms, or persons, any two or more of them.

1. To create or carry out restrictions in trade or to acquire a monopoly either in intrastate or interstate business or commerce.

2. To limit or reduce the production or increase the price of merchandise, or of any commodity.

3. To prevent competition in manufacturing, making, transporting, selling and purchasing of merchandise, produce or any commodity.

4. To fix at any standard or figure, whereby its price to the public or consumer shall in any manner be controlled, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State or elsewhere.

5. To make any agreement by which they directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any article or commodity, either by pooling, or withholding from the market, or selling at a fixed price, or in any other manner by which the price might be affected.

6. To make any secret oral agreement or arrive at an understanding without express agreement by which they directly or indirectly preclude

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a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any article or commodity, either by pooling, withholding from the market, or selling at a fixed price, or in any other manner by which the price might be affected."

A violation of the provisions of the act is made a misdemeanor and prosecution proceeds, in the case of violation by a corporation, against the individual directors of such corporation. In addition to the punishment which may be imposed for the misdemeanor the charter of the offending corporation may be revoked by the attorney general of the State.

The second of the seven laws makes it unlawful to discriminate between different persons, firms, associations or corporations, or different sections, communities or cities of the State by selling any commodity, or rendering any service at a lower rate in one place than another, or at a different rate or price at a point distant from that of production or manufacture, allowance being made for difference, if any, in the grade, quality, or quantity and actual cost of transportation, when the effect or interest of such differences is to establish or maintain a virtual monopoly, hindering competition or restricting trade. Violation of this act constitutes a misdemeanor.

The third law is amendatory to the existing corporation law passed in 1896, and forbids any corporation from purchasing property or stock at a higher price than its real valuation, or from issuing stock on the basis of stock purchased of any other corporation, for an amount greater than the sum actually paid for the stock.

It also forbids the issuance of any fictitious stock, or any stock in anticipation of profits not yet earned. Further, the law requires that the property purchased, or the property owned by the corporation, whose stock may be purchased shall be cognate in character and use, to the property used or contemplated to be used, by the purchasing corporation in the direct conduct of its own proper business.

When a corporation proposes to issue stocks for property purchased or for the stock of other corporations purchased, a statement to that effect signed by the directors of the purchasing company must be filed in the office of the secretary of state, showing what property or stock has been purchased and the amount actually paid for the same.

Any false representation, or the purchase of property or stock for the purpose of restraining trade or commerce, or acquiring a monopoly, is made a misdemeanor and the directors of the corporation are held liable.

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The fourth of these laws endeavors to prevent any possible evasion of the laws, providing that any person or persons who shall organize, or incorporate under the laws of the State with the intent of furthering any object which is fraudulent or unlawful, or which is intended to be used in restraint of trade or to acquire a monopoly, shall be guilty of a misdemeanor. The law further provides that any person or persons wilfully using such corporation in promoting an object fraudulent or unlawful, or in any restraint of trade, shall also be guilty of a misdemeanor.

Law five is also an amendment of the corporation law of 1896. It provides that when two or more corporations are merged or consolidated, the consolidated company, when issuing bonds or other obligations in making the necessary payments to effect the merger, may, provided the bonds shall not bear a greater interest than six per cent, "issue capital stock, either common or preferred, or both, to secure such an amount as may be necessary to the stockholders of such merging or consolidated corporations in exchange or payment for their original shares."

The sixth law, amendatory to the 1896 act, makes it illegal for any corporation to purchase, hold, or dispose of stocks, bonds, or securities, of other corporations except those of non-competing corporations which may be obtained in payment of debts due from such corporations, or may be purchased as a temporary investment from surplus earnings, or as an investment of funds held for the benefit of employees, or for insurance, or rebuilding, or depreciation purposes.

The last of the so-called "seven sisters" declares that the rights of the creditors shall not be impaired when a merger of corporations occurs. Such merger is allowed only upon approval of the Board of Public Utility Commissioners of N. J. Any corporation and its directors procuring or assenting to a merger without complying with the provisions of the law are guilty of a misdemeanor and punishable accordingly.

F. A. UPDYKE,
Dartmouth College.

CORRECTION: By error it was stated in the August, 1913 issue (vii, 447) that the Illinois law creating a Legislative Reference Bureau was vetoed. The law was signed by the governor and is to be found on p. 39 of the laws of Illinois for 1913.

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CURRENT MUNICIPAL AFFAIRS[1]

ALICE M. HOLDEN

Secretary of the Municipal Research Bureau, Harvard University

The city manager plan, an outgrowth of commission government, has, until recently, made but slight impression upon the popular mind. To several Ohio cities belongs the credit of bringing this plan into the realm of practical possibility. Within the last few months the cities of Cleveland, Lakewood, Elyria, Akron, Youngstown, Canton, Salem, Dayton, Springfield, Middletown and Norwood have been engaged in charter-drafting. In Columbus and Cincinnati charter commissions are now in session. Only the charters of Cleveland, Lakewood, Dayton, Springfield and Middletown have carried at the polls. Of all the charters drafted those of Dayton, Springfield, Youngstown and Elyria were of the city manager variety, while those of Akron, Canton, Salem, Middletown and Norwood embodied the commission plan. Cleveland and Lakewood have adopted a modification of the federal plan.

The Dayton and Springfield charters are, in essentials, identical. Both provide for commissions of five members, elected at large and for terms of four years. Dayton has a mayor; Springfield a president of the commission. In each case the incumbent is to be the official and ceremonial head of the city somewhat as the mayor of an English borough corporation. The real head of the administration is the city manager, chosen by the commission without regard to political affiliation and with no required residence qualification. The city manager appoints and removes, subject to civil-service rules, all heads of departments and all subordinate officials and employees of the city. He is given the right to attend council meetings and participate in discussions, but has no vote. The municipal budget is prepared by him for the consideration and action of the council. Both the commissioners and the city manager possess wide powers of investigation. In Dayton the city manager may suspend the chiefs of the police and fire departments for specified reasons and no voucher may be honored unless countersigned by him. At the same time he, like the members of the commission, is subject to the recall. This is a provision which cannot be too strongly

[1] The information on the cities in Ohio was supplied by Mr. F. W. Dickey of Western Reserve University.

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condemned; it indicates a lack of faith, on the part of the framers, in their own plan.

In both Dayton and Springfield the ballot is non-partisan. Primary elections are to be held under the general laws of the State. The method of rotation of the names on the ballot is similar to that found in the Cleveland charter, described in the last issue of the REVIEW.

The Elyria plan does not differ materially from the above-described charters save that the title, "director of public affairs," appears rather than that of "city manager."

The rejected Youngstown charter added to the city manager plan nomination by petition, a non-partisan ballot, and the preferential system of voting. The council is elected from nine wards for a term of four years, and its administrative authority (for all the powers of municipal government are lodged in the council) is exercised through a general director. The mayor is elected by the council from among its own number. He possesses two votes in case of a tie, and appoints all standing and special committees of the council. The general director is required to have been a resident of the city for five years. In general he has the powers conferred upon the city manager in Dayton and Springfield. He has a seat in the council and may introduce measures. The general director, the director of law, the director of finance, and the heads of departments and divisions constitute a council of administration which is required to meet once during the month.

The charter of Akron deserves special mention. It lodges all the powers of city government in a mayor and two councilmen, to be elected at large for four years and to receive salaries of $4000 for the mayor and $3600 for each of the two councilmen.

All of the charters mentioned above include provisions for the initiative, referendum and recall. In all are found provisions for a non-partisan ballot; in five—those of Cleveland, Youngstown, Middletown, Salem and Norwood—there is provision for nomination by petition; and four—those of Cleveland, Youngstown, Salem and Norwood—adopt the preferential system of voting. Of these, however, only the Cleveland charter has carried.

Besides the Ohio cities, Douglas, Bisbee and Phoenix, Ariz., are to vote soon on the question of adopting the city manager plan. In Thief River Falls, Little Falls, and Winona, Minn., in Hastings, Neb., in Cadillac, Mich., and in La Grande, Ore., the plan has been reported favorably and will be acted upon later. Two other cities, Dallas, Tex., and Whittier, Cal., are considering its adoption. In El Reno, Okla..

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attempt is being made to amend the present commission government charter in order to cover the choosing of a city manager and a council of nine members. Morganton and Hicory, N. C., and Abilene, Kan., are three cities which already have general managers, and Fredericksburg, Va., has a modified city manager plan in its single commissioner.

In view of the increasing prominence of the city manager plan, a word might well be said concerning the working of that plan in Staunton, Va. After a trial for three years it has been found to be a great success and to be well adapted to the conditions of that city. Prior to 1910 the government of Staunton was administered by a mayor and city council; but in that year, although the law forbids the abolition of those officers, a general manager was engaged to direct the business of the city in conjunction with the mayor and under the eye of the council. The general manager, who is a practical engineer and under bond, has directed the various departments, has had charge of city improvements, and has purchased all supplies. This scheme has proved an entire success during its three years of operation, and the choice of that particular general manager has been especially wise.

Along with the progress of the general manager plan in this country, it is interesting to know that a similar plan was discussed for the city of Glasgow some years ago—that the city should entrust its corporate affairs to a general manager. The plan, needless to state, was not adopted.

The United States Supreme Court has lately rendered a decision which has an important bearing on a phase of franchise-granting in Kentucky. The case was that of the city council of Owensboro, Ky., against the consolidated telephone company of which the Cumberland Telephone Company was one member. In 1889 the city had granted to that company, its successors and assigns, the right to erect and maintain poles and wires in the city streets. Some time after this the company, which had a life of twenty-five years, was consolidated with that of another whose life is two hundred years. The city council in 1909 passed an ordinance requiring the company to remove its poles and wires. The circuit court granted a permanent injunction against the city and the Supreme Court affirmed the decree. In substance the court ruled that the granting by a city of the right to place and maintain upon the city streets the poles and wires of an incorporated telephone company is not a mere license but the grant of a property right, which is assignable, taxable, and alienable, and that such a right, made to the company, its succes-

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sors and assigns, is the grant of a property right *in perpetuity* unless some limit to its duration is in the grant itself, imposed by the general laws of the State or the corporate power of the city. The court decreed also that a city has not the power to revoke or destroy contractual rights such as is constituted in the present case through the grant made by ordinance of the city and accepted by the incorporated company. A good deal of alarm is being felt among the cities of Kentucky at the consequences of this bestowal on a private corporation of perpetual rights to the streets of a city. It is feared that a result of the ruling may be to establish perpetual franchises in many cases which were intended to last only for a given period. Yet the decision may bear its good fruits in that more care will be taken in the wording of ordinances granting rights to private corporations—by granting these rights to the companies and not to their successors, by stating the time for which the grant is made, and by reserving to the city control over the powers granted, as well as the power to repeal the ordinance or to revoke the right under certain conditions.

The drafting of the new city charter in Detroit has advanced to the point of being ready for submission to the voters in November at a special election. In brief the most important changes which the new charter proposes are the following. There are the usual "new organs of democracy"—the adoption of the non-partisan ballot, preferential voting, nomination by petition (five hundred names in the case of the mayor; two hundred for other city offices), the initiative, referendum and recall. The city is to be redivided into twenty-one wards—an increase of three—and the city council is to be composed of one alderman from each ward, a reduction in membership of fifteen. The date for city elections is moved forward to April and the term of city officers is increased from two years to four. In the matter of salaries, there is an increase for the mayor of from $5000 to $8000 and smaller increases in the case of the city clerk, city treasurer, corporation counsel, and commissioner of public works. Each member of the council is to receive $2500 per year.

There are several changes in the boards of departments which carry on the business of the city. The board of estimates, composed of two members from each ward and five members from the city at large, is abolished, and, in its stead, the making of the budget is in the hands of the council, subject to revision by the mayor and then once more referred to the council, which may reject the mayor's findings by a three-fourths vote. Three new bodies are created. A new department of public safety is to have control of inspection of electric wires, buildings, plumb-

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ing, drainage, gas water-heaters, boilers, steam machinery and the issue of licenses. Under the new recreation commission is the charge of playgrounds, indoor recreation centers, debating clubs, gymnasiums and private baths, and the inspection and regulation of commercial amusements for which licenses are required. A department of labor welfare is also established, under a single commissioner, to adjust differences between employer and employee and to give advice to workingmen. With the consent of the council the labor welfare commission may establish a free employment bureau and a loan bureau. Provision is also made for the new street railway commission which was established by the terms of the charter amendment last fall; and the water commission, hitherto a separate corporation, has been brought under the city government.

According to a recent consular report the city of Amsterdam owns its gas, water and electricity works, the street railroads, the telephone system, many of the docks, and a large amount of ground in the central business section, which is leased for building purposes. From these different undertakings comes more than one-fifth of the receipts of the city; another third is derived from taxes. In estimating the receipts and expenditures of Amsterdam both are always placed at the same amount, which for the year 1914 are officially rated at $15,649,811. Last year the city debt was reduced by $1,200,000.

The University of Illinois has instituted a chair of civic design in its faculty and is said to be the first American university or college to do this, although courses in city planning have been given at several institutions during recent years. Prof. Charles Mulford Robinson has been appointed to fill the chair.

The most recent municipal reference bureau is that which has been established at the University of California as a department of its university extension division. The bureau is to be administered for the benefit of city officials throughout the State and will furnish not only information as to other cities, but also expert advice on a particular subject from the university authority in whose special field the matter falls. The first work of the new bureau is the organization of a municipal reference library. The University of Michigan has also taken the initial steps towards the establishment of a similar institution.

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The New York department of labor is making a special study of the industrial organization of New York City, the inter-relationship of the localization of factories in the city, and such local problems as transportation, building operations, and congestion of population.

The following are some of the more recent American publications bearing broadly on the subject of municipal government: E. H. Turner, *The Repayment of Local and Other Loans and Sinking Funds* (New York: Ronald Press, 1913. Pp. xxvii, 536, $6); *State and Local Taxation;* Sixth Annual Conference, under the auspices of the National Tax Association, Des Moines, September 3–5, 1912; Addresses and Proceedings (Madison: National Tax Association, 1913. Pp. xiii, 558, $3); H. Christian Rowie, *Our City Civilization* (Baltimore: Williams & Wilkins Company, 1913. Pp. 245, $1); Mrs. Schuyler van Rensselaer, *A History of the City of New York in the Seventeenth Century* (New York: Macmillan, 1913. 2 vols., $5); James Hughes and others, *Public School Methods* (Chicago: School Methods Co., 1913. $19.75); A. H. Leake, *Industrial Education: Its Problems, Methods and Dangers* (Boston: Houghton, Mifflin, 1913. $1.25); H. H. Seerley, *The Country School* (New York: Scribner, 1913. Pp. xx, 218, $1); Frances W. and J. D. Burks, *Health and the School* (New York: Appleton, 1913. Pp. 393, $1.50); Fletcher B. Dresslar, *School Hygiene* (1913. Pp. xi, 369, $1.25); Lewis M. Terman, *The Hygiene of the School Child* (Boston: Houghton, Mifflin, 1913); C. A. Prosser, *Teachers' Annuities and Pensions; A Study of Teachers' Retirement Allowance Systems* (Boston: Houghton, Mifflin, 1913); C. R. Henderson, *Social Progress in the West* (Chicago: University of Chicago, 1913. Pp. 184, $1.25); C. W. Thompson and G. P. Werber, *Social and Economic Survey of a Rural Town in Southern Minnesota* (Minneapolis: University of Minnesota, 1913. Pp. 75, $1); J. S. Paton, *Progress and Plenty* (Boston: Christopher Press, 1913. Pp. 136, $1.25); M. J. Rosenau, and others, *Preventive Medicine and Hygiene; with chapters upon sewage and garbage, vital statistics, etc.* (New York: Appleton, 1913. Pp. xxviii, 1074, $6); Francis Ramaley, and Clay E. Griffin, *Prevention and Control of Disease* (1913. Pp. 286, $3); John Kenlon, *Fires and Fire Fighters* (1913. Pp. xii, 410, $2.50); American School of Correspondence, *Cyclopedia of Fire Prevention and Insurance* (Chicago: 1912. 4 vols. Pp. 1800, $15.80); Lazarus White, *The Catskill Water Supply of New York City* (New York: Wiley, 1913. Pp. xxxii, 755, $6); Jerome Cochran, *A Treatise on the Inspection of Concrete Construction; containing practical hints for concrete inspectors, superintendents, and*

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others engaged in the construction of public and private works (Chicago: M. C. Clark, 1913. Pp. xv, 595, $4); American School of Correspondence, *Building Code; a compilation of building regulations covering every phase of municipal building activity with special emphasis on fire preventive features* (Chicago: 1913. Pp. 128, $1); E. H. McClelland, comp., *Bibliography of Smoke and Smoke Prevention* (Pittsburgh: University of Pittsburgh, 1913. Smoke Investigation Bulletin No. 2. Pp. 164, $0.50); H. H. Norris, *Electric Railways; a comprehensive treatise on modern electric railway practice* (Chicago: American School of Correspondence, 1913. Pp. 281, $1.50); *Canadian Housing and Town Planning Congress, Proceedings* (Held in Winnepeg, July 15–17, 1912). (1913. Pp. 123.)

Public Opinion and Popular Government, by President A. Lawrence Lowell, of Harvard University (New York: Longmans, Green & Co., 1913) contains a considerable discussion of experts in municipal government. There is an historical consideration of the development of expert service in cities, together with a survey of such matters as the recruiting and control of expert officials.

How New York City Administers its Schools, by Ernest C. Moore (Yonkers: World Book Co., 1913, pp. x, 321). In this book (the first volume of the new School Efficiency Series, edited by Paul H. Hanus) is published the result of Professor Moore's report for the committee on school inquiry to the board of estimate and apportionment of New York City. After a thorough analysis of the New York board of education, its composition, duties, complexities, and each branch of its activities, Mr. Moore summarises in one chapter the twenty-eight recommendations offered by the committee. Briefly, these make for the establishment by law of a board which shall "provide a united, informed and energetic administration of the schools." To this end is recommended a small, unpaid board, with a general manager in the person of the superintendent of schools, who shall be a member of the board ex-officio. This new board should be made independent of other municipal control by having its own position definitely laid down by the courts and by controlling utterly the funds appropriated for school purposes according to its own estimate of what is needed. The volume contains, among its appendices, a chapter on the making of a school budget.

The Bureau of the Census has just issued a special report containing statistics of sewers and sewerage disposal, refuse collection and disposal,

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street cleaning, dust prevention, highways and general highway service of cities having a population of over 30,000. The report has been prepared under the supervision of LeGrand Powers, chief statistician for financial and municipal statistics, and is an excellent piece of work. It includes an historical introduction and a large amount of descriptive matter concerning such topics as sewer service accounts, records and reports; methods of refuse collection by city employees and contractors; disposal of city waste; general problems of street cleaning; and many tables of useful statistics relating to different topics of city pavements.

Among recently issued pamphlets are the following: L. P. Ayres, *The Effect of Promotion Rates on School Efficiency* (Reprinted from the American School Board Journal, May, 1913. Pp. 13); A. M. Stimson, *The Citizen and the Public Health* (Washington: Government Printing Office, 1913. Pp. 13); John Nolen, *General Plan of a Park and Playground System for New London, Conn.* (Report to the Municipal Art Society of New London, 1913. Pp. 41); C. A. Perry, *How to Start Social Centers* (New York: Russell Sage Foundation, Department of Recreation, 1913. Pp. 40, 10 cents); G. A. Johnson, *The Purification of Public Water Supplies* (Washington: Government Printing Office, 1913. pp. 84); *List of Books and References to Periodicals on Harbors and Docks in the Seattle Public Library* (pp. 40); J. S. Pray and Theodore Kimball, *A City Planning Classification; preliminary outline* (Cambridge: Harvard University, 1913. Pp. 11); *Cambridge Housing Report* (Cambridge Housing Committee, 1913).

Recent foreign publications in the field of municipal government are as follows: Gilbert Slater, *The Making of Modern England* (London: P. S. King, 1913. 7s. 6d.); Harry Barlow, *The Law relating to Town Planning in England and Wales. A Handbook for Local Authorities, the Legal Profession, Landowners*, etc. (London: P. S. King, 1913. 6s. 6d.); Henry Parkinson, *A Primer of Social Science* (London: P. S. King, 1913. 2s.); Mrs. Philip Gibbs, ed., *First Notions on Social Service* (Catholic Studies in Social Reform) (London: P. S. King, 1913. 6d); H. Maclean Wilson, *A Text Book on Trade Waste Water* (London: Charles Griffin & Co., 1913. 18s.); Philip à Morley Parker, *The Control of Water as Applied to Irrigation, Power and Town Water Supply Purposes* (London: George Routledge & Sons, 1913. Pp. 1055, 21s.); A. Hugh Seabrook, *The Management of Public Electric Supply Undertakings* (London: The Electrical Times, 1913. 7s. 6d.); E. T. Powell, *The Mechanism of the*

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City. An Analytical Survey of the Business Activities of the City of London (London: P. S. King. 3s. 6d); W. M. C. Wanklyn, *London Public Health Administration* (London: Longmans, Green. 2s. 6d); Th. van Welderen Baron Rengers et J. H. Faber, *La Frise et la Loi sur les Habitations, 1902-1912* (Leeuwarden: Meyer & Schaafsma, 1913.); P. Leris, *Les Dettes comparées des villes de France* (Paris: F. Alcan, 1913. 2 fr.); *Statistique démographique des grandes villes du monde* (Amsterdam: Bureau Municipal de Statistique, 1911); Walter Eickemayer, *Zur Frage der zweiten Hypothek beim privaten grossstädtischen Wohnhausbau und- Besitz in Deutschland* (Stuttgart: W. Kohlhammer, 1913. Pp. 181, M 4.); W. Gemünd, *Grundlagen zur Besserung der stadtischen Wohnungsverhältnisse* (Berlin: J. Springer.); Albert Kohn, *Unsere Wohnungsenquête im Jahre 1910* (Berlin: 1912); H. Silbergleit, *Ergebnisse der bisherigen Versuch kommunaler Fleischversorgung in den grösseren deutschen Städten* (Berlin: Puttkammer u. Mühlbrecht, 1913. Pp. 43. *Mitteilungen des statischen Amts der Stadt Berlin III.*); M. Neefe (in Verbindung mit seinem Kollegen), *Statistiches Jahrbuch deuscher Städte* (Breslau: Wilh. Gottl. Korn, 1913. M. 16); Karl Otto Müller, *Die Oberschwäbischen Reichsstädte. Ihre Enstehung und ältere Verfassung* (Stuttgart: W. Kolhhammer, 1912. Pp. 447.); Walter Draeger, *Das alte Lübische Stadtrecht und seine Quellen* (Berliner Dissertation, 1913. Pp. 91); F. Greineder, *Die finanzwirtschaftliche Stellung der kommunalen Gaswerksunternahmen und das Problem der rationallen Licht- Kraft- und Wärmeversorgung der Stadt- und Landgemeinden* (Munich: R. Oldenburg, 1913. Pp. 48, 1.50 M.); Otto Most, et al., *Die deutsche Stadt und ihre Verwaltung, eine Einführung in die Kommunalpolitik der Gegenwart* (Berlin; 1912–13. III Bande. 2.40 M.); J. Pestzner, *Die relative Steuerkraft der preussischen Städte in graphischer Darstellung* (Oldenburg: 1912. 2 M.); Fr. Kleinwächter, jun., *Das Wesen der städtischen Grundrente* (Leipzig: C. L. Hirschfeld, 1912. Pp. 234, 7.50 M.); H. Kampffmeyer, *Die Gartenstadtbewegung* (Leipzig: B. G. Teubner, 1913. 1.25 M.); Karl Forcheimer, *Das Baurecht. Zur Einführung des Erbbaurechtes in die österreichische Praxis* (Vienna: Manzsche Universitäts-Buchhandlung, 1913. Pp. 100, K. 3.00)

The London county council announces the publication of volume iv. of the *Survey of London* (P. S. King, 1913), which is being undertaken by the council and the committee for the survey of the memorials of Greater London. This volume, as well as each of the three previously issued, relates to a particular part of London. The work contains architectural

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descriptions of the most beautiful and interesting buildings in Greater London, with historical and biographical notes on famous people who have occupied them; there are profuse illustrations, together with maps and plans; and a pocket map of the parish is included in each.

The issues of the English *Municipal Journal* for August 29 and September 5, 1913, contain a summary of the annual report of the local government board on local and central administration of the housing acts in England and especially of that portion of the report which deals with the progress of town planning under the act of 1909. The report notes a decided forward movement not only in the action of local authorities in preparing town-planning schemes, but also in the spirit of approval and responsibility which is being shown by owners of large estates and landowners in general, not alone with regard to their own lands, but to the land surrounding.

In August, 1912, the city of Houston, Texas, appointed a special commissioner to spend six months in the study of the organization and management of the public works and governments of the principal cities of Europe (notably in Great Britain and Germany), for the purpose of making use of the consequent enlightenment to develop Houston into a great seaport city. The result is Mr. Frank Putnam's *City Government in Europe* (published by the city of Houston, Texas, 1913, pp. 137). Such public activities as municipally-owned public utilities, slums, the land increment tax, municipal art, accounts and statistics, sea-port trade, etc., have been observed in the different European cities and with special reference to Houston. As a foreword Mr. Putnam makes five general deductions with regard to Houston, from his experiences in Europe: that its situation on the Gulf of Mexico with reference to national and international trade routes insures it a large growth in the future; that, to utilize its advantageous position, a large amount of money must be spent; that this money can only be secured by issuing bonds and by assessing the cost of improvements against owners of abutting property with enhanced land-values; that the money so obtained should be invested in revenue-producing properties in order to support the cost of non-revenue-producing improvements by the surplus revenues of the former; and, lastly, that any change in the form of city government should be for the certain continuity of constructive municipal policies and for the employment of technically trained men in all responsible positions.

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Interesting articles in the issues of *The American City* for July, August, September, and October, are the following: "The Need of a Systematic Paving Program," by Nelson P. Lewis; "How St. Paul and Baltimore Disposed of City Securities Direct to the People," by W. P. Kirkwood and J. H. Adams; "Utility and Attractiveness in Economic Reservoir Design," by Alexander Potter; "Docks and Harbor Improvements," by Frank Koester; "Two Epoch-making Campaigns in Dayton, Ohio," by Fred W. Fancher; "The St. Petersburg Training School for Fire Chiefs," by William Sheperdson; "How to Attack the Sewage and Garbage Problems," by Rudolph Hering; "A Residence Section Planned on Nature's Lines (Roland Park, near Baltimore);" "The Playground Attendance and the Playground Director," by Henry S. Curtis; "About Small Public Libraries," by John Cotton Dana; "Recent Progress in Fire Prevention and Fire Fighting in New York City," by Joseph Johnson; "How to Work for Housing Reform,' by Lawrence Veiller; "The Industrial Suburb," by George H. Miller; "Standardized Street Traffic Regulation," by William P. Eno; "Methods and Means of Smoke Abatement," by Raymond C. Benner; "Some Serious Weaknesses of the Commission Plan," by H. S. Gilbertson; "The New York Idea of a Zoölogical Park," by Hermann A. Merkel; "How to Organize a City Planning Campaign," by Frederick Law Olmsted; "Torrance: An industrial Garden City," by Dana W. Bartlett; "Medical Inspection in the Public Schools," by W. J. Gallivan, George W. Coler, and Joseph Lee; "The Value of Holidays in the Building of Citizenship," by Everett B. Mero; "Practical Aspects of the City Waste Problem," by George H. Norton, S. Whinery, and W. F. Morse.

The best discussion of the whole billboard problem is that contained in the New York Billboard Commission's *Report*, issued on August 1, 1913. The report makes a volume of 150 pages which cover every phase of the subject in full detail. A splendid chapter is devoted to the legal rights of the city in connection with the regulation of billboards, an admirable review of all the important judicial decisions being included in this discussion. Chapters 9 and 10, entitled "Regulations by Taxation," may also be commended to all persons interested in this general subject as containing a good concise review of regulation-ordinances now in force among various American cities. The report includes the draft of a statute embodying the commission's recommendations for New York City. In order to render the enforcement of this statute easier a consti-

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tutional amendment seems to the commission to be desirable, and the following is the amendment suggested: "The promotion of beauty shall be deemed a public purpose, and any legislative authority having power to promote the public welfare may exercise such power to promote beauty in any matter or locality, or part thereof, subject to its jurisdiction. Private property exposed to public view shall be subject to such power."

The suit brought by the city of Milwaukee alleging a violation of the municipal ordinances applying to billboards, has recently been decided against the city. The court ruled that under its police power the construction of billboards can be regulated and controlled only in so far as to protect the health and safety of its citizens. It cannot, for aesthetic reasons, deprive lot-owners of the right to cover the entire space of ground if they so desire.

In City Building: a citation of methods in use in more than one hundred cities for the solution of important problems in the progressive growth of the American municipality, by S. H. Clay (Cincinnati: Clark Publishing Co., 1913, pp. 164), Mr. Clay, who is secretary of the Lexington, Ky., Commercial Club, has given in a small volume the benefit of his experience for the greater efficiency and lesser complexity of the new profession of the "commercial secretary." As its sub-title denotes, the book abounds in suggestions of a concrete nature on such subjects as the most effective commercial organization, the value and importance of "publicity," the inducing of new industries to a city, the extension of wholesale and retail trade, methods for conducting campaigns for better streets, transportation, schools, roads, etc., and the general effect which each factor in the city has on the whole community.

The attention being paid to city planning is steadily becoming more general and more effective. In this action the State of Pennsylvania is one of the leaders. In addition to the passing of the Ambler metropolitan planning district bill for the city of Philadelphia and its suburbs (noted in the last issue of the REVIEW), a bill has been approved by Governor Tener to create for cities of the third class an additional executive department known as the department of city planning. This branch of the municipal government will be in charge of a city-planning commission of five persons, to be selected by the mayor and council for five-year terms. Authority will be given them to supervise the location and widening of street, parks, playgrounds, public buildings, civic centers and other public improvements for three miles outside the city's limits.

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The commission will also have the power of disapproval, which does not, however, constitute a veto power.

A permanent city planning commission has been proposed for the city of Baltimore and will probably be made a reality. This commission will be determined by a conference of representatives from all the commercial, business and improvement organizations in the city. It is planned that the commission, headed by an expert, will coöperate with the city administration for the improvement of the railroad service, civic comfort and commercial interests.

Various organizations in St. Paul, Minn., have become charter members of a permanent local city planning conference which will hold semi-annual meetings and an annual city planning exhibit in connection with one of them. The work of this body will be carried on by means of five committees: on street planning, traction lines, railroads and docks; public buildings, open spaces and waterways; housing; legal administrative methods; municipal real estate policies; and taxation. It is intended that city officials shall become members of the working committees which are related to their own work.

In Bridgeport, Conn., a city planning commission is proposed, to be appointed by the mayor. The commission will consist of eight citizens, including the presidents of three large commercial organizations and the mayor ex-officio. Its members are to serve without compensation. The authority of the commission will extend to the various public activities now in existence and to the plans for future growth and improvements.

City planning in Sacramento, Cal., will be taken in charge by the chamber of commerce, and the proposal is to enlarge the present committee on city planning into a permanent bureau of fifteen heads, each with a working committee of ten. Every separate committee will work upon its own recommendation until brought to completion, and then a new project will be taken up.

By an act of the Massachusetts legislature there is created a city planning board for every city of the commonwealth and for every town of over 10,000 population. This board, in cities, shall be appointed by the mayor, subject to confirmation by the council, or, in the case of commission governed cities, by the governing body of the city; in towns the voters shall elect the board at the annual town meeting. The duty of the boards comprises a careful study of the city or town in order to eliminate conditions injurious to health, and comprehensive plans for development with especial reference to housing.

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A city planning commission, to superintend the general growth and laying out of the city, is being urged for Providence, R. I., by the various local organizations of the city.

From November 24 to December 6 there will be held, in New York City, an exhibition of American and Foreign city planning in conjunction with the exhibition of the works of the "heights of buildings committee" of the board of estimate and apportionment. The scope of the exhibition is unusually wide, since it takes up the subject of city planning as a whole as well as each of the separate factors; as, for instance, civic centers and public buildings, educational buildings, industrial buildings; river and harbor improvements, bridges, culverts, viaducts; monumental architecture, parks, cemeteries, recreation grounds, markets; streets and roads and their fittings, water works, waste disposal; housing. The advisory committee on the city planning exhibition has given the work of preparing it to the *American City* bureau. After being displayed in New York the material will be available for use in others cities.

Harvard University and the Massachusetts Institute of Technology have coöperated in the founding of the School for Health Workers, which is being conducted in Boston by an administrative board appointed by both institutions. The director of the school is Prof. Milton J. Rosenau, its secretary is Prof. G. C. Whipple, and the chairman of the administrative board is Prof. W. T. Sedgewick. Its principal object is to prepare young men for public health work and especially to fit them to fill administrative and executive positions (such as health officers, members of boards of health, secretaries, agents or inspectors of health organizations). The subjects offered in the course of study cover a wide range and include medical, biological, hygienic and engineering sciences, together with practical health administration. The instruction will be by lectures, laboratory work and other forms offered by both Harvard and Technology, together with special instruction from national, state and local health agencies. The school aims to provide the scientific groundwork of sanitary knowledge which must underlie efficient health administration. The certificate of public health will be given only after at least one year of resident study.

The summer season has been productive of a good deal of agitation over the subject of municipal ice plants. Four cities in Connecticut,—Bridgeport, New London, Hartford, and Waterbury,—are making plans to enter into the municipal ice business, and the city of Fall River, Mass.,

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has a similar scheme in contemplation. In general, of course, this movement is the result of the refusal on the part of the various ice companies to keep the price of ice within bounds. On the other hand, the efforts of the Socialists in Schenectady have failed in their attempt to lower the cost of ice, and in that city the city government has been permanently restrained from entering into the ice business by an injunction of the supreme court of the state. In New York Mayor Gaynor vetoed an aldermanic resolution whereby the sum of $32,000 was to be appropriated to establish a municipal ice plant for supplying ice to the municipal departments. It was estimated by the sponsors of this scheme that the saving effected would be about twice the cost of the plant. However, in St. Paul, a committee appointed to look into the matter of a municipal ice plant has reported that such a venture would be too costly for the city and that the ice could be sold no more cheaply than by private companies.

The city of Sacramento, Cal., is to publish a weekly municipal gazette as is required by the terms of its charter. This publication will contain accounts of the commission's actions and the city advertising which is now done in a daily newspaper.

The city of Cambridge, Mass., is to have a sanitary survey which will be more thorough and comprehensive than that hitherto undertaken by any other municipality. The reason for this searching scrutiny of sanitary conditions is found in the fact that a great many new industries have lately set up in Cambridge, and thereby have brought to the city a large body of laborers; and that the new rapid transit facilities which connect it with Boston have made it more accessible for residence. To accommodate this new industrial and residential population there have been no steps taken until the appointment, by the mayor, of the present sanitary survey commission. The survey will cover such matters as refuse and garbage collection and disposal, sewerage, health regulations and housing arrangements. Prof. George C. Whipple will direct the work of the commission.

In the conduct of its public market the city of Johannesburg, South Africa, is acting on the broadest principle for providing efficient service. The market was opened on March 27 after a great deal of expense and preparation. On the giving up to civic purposes (buildings, parks and gardens) of the area which had been planned and purchased for market

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purposes, a new site of 178 acres was bought by the city at a cost of $5,000,000. This land, which was conveniently situated for market purposes, was covered with unsanitary dwellings and badly laid out. The entire site was cleared off, leveled, new streets laid out, building lots blocked off, and a plot of 25 acres reserved for the market itself. Wholesale and retail trade in cattle, grain and general farm produce is carried on in the market.

The market building, which is the largest of its kind in South Africa, and cost about $550,000, is used for selling fruit, vegetables, flowers, butter, eggs, fish and meat. It consists of 41 shops, a restaurant, a bank, a post office, and a railway office. In the annex are 11 shops for the sale of fish, butter, meat and dressed poultry. A large meeting room for farmers and other dealers is also provided. Close to the produce market is the live-stock cattle market and, 50 feet away, the municipal abattoirs. The plant also includes a quarantine market for cattle received from infected areas or districts not covered by government inspection, and a plant to convert condemned meat into fertilizers.

Apart from its spacious quarters and its comprehensiveness, the market at Johannesburg is noteworthy because it was planned to be directly connected with the main residence district of the city by street railways and adjacent to the railways for easy transportation of produce. Thus a minimum of cost and trouble to the producer is combined with a maximum of comfort and convenience to the consumer. Street railway cars are run to the market at intervals of seven and one-half minutes and free return tickets are issued to market passengers. A motor delivery wagon delivers purchases to places in Johannesburg and the suburbs within a three-mile radius at a slight charge. In its attempt to make the market system valuable in all ways to the public, the city of Johannesburg has spared no expense or trouble, and the results so far are entirely satisfactory.

For the sake of diminishing the great waste of water in Chicago an ordinance has been presented to the city council by the water department of the city by which about 300,000 meters shall be installed. This, with the 19,000 meters already in service, will provide the metered system for the entire water supply. The present consumption of water in Chicago uses practically all the available supply, and it is hoped that a large amount of the nearly 400,000,000 gallons now being wasted each day may be saved.

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According to a recent investigation made in Spokane, Wash., it was estimated that from 10,000,000 to 15,000,000 gallons of water per day, costing the city at least $150,000 each year, are wasted in the city because of leaky mains in the streets and poor plumbing in the property of consumers. A thorough underground survey of the entire water system is now being undertaken. A general cry of water famine is being heard all over the country, due not only to insufficient supply of water, but also to its waste through leakage and through carelessness on the part of consumers when its use is not metered. A recent fire in East St. Louis, Ill., damaged the water works of that city to the extent of about $300,000.

A new union station, to be built at a cost of $17,000,000, is assured for the city of Cleveland. The site for the station will be sold to the railroads by the city for $1,400,000, the money to be used by the city for the purchase of additional land in the proposed civic groups. The station will be a part of the Cleveland group plan, five buildings of which are now provided for. The federal building and the court house are already constructed, and the city hall, public library and union station are yet to be built.

Rapid transit in Philadelphia is to be greatly facilitated during the next few years. Plans are being made for a huge system which will be ready for use in 1918 and which is to cost nearly $60,000,000. It comprises many subways, surface lines, and elevated roads. The city transit director recommends that the improvements on the present system be made as a unit and the plan be worked out in its entirety. The construction will probably begin in November, 1914.

Although the chamber of commerce took a decided stand against the step, the voters of San Francisco have by a vote of 50,000 to 14,000, authorized the city to issue $3,500,000 in bonds for municipal street railroads. The reason alleged for this large vote in favor of the bond issue is the strength of union-labor sentiment.

A new device for the regulation of street traffic is to be tried in Philadelphia. This is the use of a semaphore which is similar to those used on railroads, but which the "crossing policeman" operates by hand. It can be seen a block away by drivers and chauffeurs. Semaphores are

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to be installed at all downtown street crossings since the first semaphore has proved itself a success. So far as is known, this experiment is the first to be made in any city.

The use of the fire boat is becoming more and more prevalent both by inland and seaboard cities, and it is being regarded as more and more essential, especially where there are large investments in ships, in warehouses, and in waterfront property in general. Fire boats have also been found useful for protecting property not near the water front when the high-pressure pumps of the boats can be connected with the city water mains. Among the cities which now use fire boats in this country are Baltimore, Boston, Buffalo, Chicago, Cleveland, Detroit, Duluth, Milwaukee, New York City, Philadelphia, Portland, Ore., San Francisco, and Seattle. New York City has a squad of ten of these boats—the largest number owned by any city.

In Baltimore recently nearly a million dollars' worth of municipal bonds were sold in small lots to citizens from the office of the *Baltimore Sun*. This experiment was tried because only a small amount was subscribed under sealed bids at the opening sale of the stock. Municipal bonds have been disposed of in other cities, in smaller quantities, by means of sales made in department stores. The authorities in Baltimore are well satisfied with the results of the trial.

The following joint resolution, amending the state constitution, was adopted by the Ohio legislature on April 18, 1913, and will be voted upon by the electors in November: art. xii, sect. 12. "Bonds of the State of Ohio and of any city, village, hamlet, county, road district, or township in the State, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, shall be exempt from taxation."

The supreme court of Ohio in a recent decision has sustained, by a tie vote, the validity of the non-partisan features of the new Cleveland charter. The forthcoming election in Cleveland will therefore be held under the provisions of the new charter. For the twenty-six council seats there have been nominated by petition one hundred and twenty-five candidates.

The board of freeholders of the city of St. Louis will assemble in the near future for the purpose of drafting a new charter.

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A report has been made by Mr. L. F. Fuld to Commissioner Lederle of the New York health department in regard to a system of welfare work to be used in that department and to serve as a model for similar schemes in other departments. Mr. Fuld's report is divided into three sections—for the increased working, physical, and intellectual efficiency of employees. Among the recommendations urged are the establishment of a library containing material of practical value to those working in the department, and of a newspaper which shall stimulate interest in departmental affairs among the employees; a rest room for women, free medical and surgical treatment for minor ailments; the delivery of lectures on hygiene and sanitation at regular intervals; classes in typewriting, stenography, elementary city government, English composition and letter writing; and a system of visits to all divisions of the department for the better information of employees of the branches of the work in which they are not immediately concerned. The adoption of the measures indicated in the report would entail little or no further financial appropriation and yet would greatly facilitate the working of the department.

Another enterprise of the New York health department is its free exhibitions of moving pictures in the city parks during the summer. The pictures show the best methods in the care and prevention of tuberculosis. During the first week of the pictures about 22,000 persons watched them.

During the autumn months Reed College, through its extension department, is offering to the voters of Portland, Ore., a course of six lectures on the general subject of "The Voter and the City of Portland." Individual lectures are on the following topics: How the city is governed; the city's money, its raising and spending; the health of the city; how the city protects life and property; the beauty of the city (as it is and as it might be); social progress. Illustrated by about three hundred lantern slides, the lectures present the most accurate and concrete information possible to obtain regarding conditions in Portland at the present time. In order to reach every voter of the city, and especially the new voters, the six lectures will be issued in printed form and will be freely distributed to any club or group of people so that very wide publicity for the subject matter is possible. These different meetings are at liberty to make their own arrangements or Reed College provides the lecturer and lantern operator if desired.

Under the auspices of its chamber of commerce the city of Indianapolis is to have a thorough municipal survey made of its physical condi-

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tions, its form of government, and the efficiency attained therefrom The survey will be conducted by representatives of the New York Bureau of Municipal Research, but there will also be a "consulting expert," a resident of the State who has a thorough and intimate knowledge of local conditions. The results of the survey will be printed for general distribution among the voters of the city.

A similar survey of municipal conditions is being planned in connection with the city of Toronto, Canada.

The health department of St. Louis, in an endeavor to educate the citizens concerning their food supply, is issuing pamphlets containing various suggestions and hints which are calculated to arouse a demand for better food and the more careful handling of it. Information is offered as to the standing of dealers in such commodities as milk, meat, bread, etc., and the attempt is made to place the responsibility for buying clean food on the buyer.

In comparing the cities of New York and Chicago as the two largest and most important business centers of the United States, it is claimed that during the four years ending in 1910 a greater amount of money was expended in New York on new buildings alone than the assessed valuation of the entire city of Chicago. In those years more than $380,000,000 was put into new construction in the borough of Manhattan alone, while the assessed value of Chicago in 1910 was $344,000,000—a difference of $25,000,000 or about the realty value of the city of Lawrence, Mass., or Portland, Me. During the past year the total amount of building operations in the boroughs of Manhattan, the Bronx, Brooklyn and Queens was more than $25,000,000. The present annual increase in population in New York City is now about 140,000 persons, a greater number than the total gains of the next seven largest cities of the country. This rate of increase is also larger by about 40 or 50 per cent than that of Greater London.

As a means of lucidly exhibiting to the people the variety and extent of the city's functions and governmental mechanism, the whole city government of Seattle, Wash., formed a parade, each department in line by itself and accompanied with all the tools and machinery of the office.

Under the auspices of the Proportional Representation League a complete city charter on the city manager plan with proportional repre-

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sentation, has been drawn up by Mr. C. G. Hoag, the secretary of the league, and copies may be obtained from him.

In 1903 the city of Holyoke, Mass., purchased from a public-utility company the electric and gas plants which were supplying the city with gas and electricity, and has operated them with remarkable success since that time. According to a recent report of the department of gas and electric light the price of gas in 1912 per 1000 cubic feet was $1, as compared with $1.35 in 1903, while electricity was supplied in 1912 for 6 cents per kilowatt, a reduction of 12 cents from the price in 1903. A large increase in the amount sold is reported—in 1903, 100,000,000 cubic feet of gas and 1,313,000 kilowatts of electricity were supplied, while in 1912 the amount had increased to 213,000,000 cubic feet of gas and over 12,000,000 kilowatts of electricity. The saving which results from this diminution in price and increase of output is estimated to be about $225,000 annually. The plants themselves have become much more valuable than at the time of their purchase since their capacity is from two to four times greater and their present valuation, allowing for depreciation, is $1,493,000 as compared to the valuation in 1903 of $815,458, the amount which was fixed by the commission appointed to value the plants before they were taken over by the municipality. While these fortunate results are due in large measure to the efficient superintendent of the works and city government in general, two other advantages of the circumstances in Holyoke should be noted. In the first place, the benefits which the public secure through municipal ownership of public utilities run on business principles are much greater when the city purchases a plant which has passed the experimental stage and has been well organized and developed into a profit-paying business under private capital. The second advantage is that of having paid as purchase-price the amount determined by the valuing commission as fair and conservative.

At the convention of the League of American Municipalities which was held on August 7 at Winnipeg, Canada, there were many interesting addresses. Among these were the following: "Municipal Efficiency" by Mr. C. J. Driscoll, former police commissioner of New York City; "Baltimore Street Cleaning and Garbage Removal" by Mr. W. A. Larkin, street commissioner of Baltimore; "Popular vs. Expert Government" by Mr. Ossian Lang of Mr. Vernon, N. Y.; "Municipal Finance" by Mr. W. S. Evans, former mayor of Winnipeg; and "New Charter and Election Laws" by Mr. J. B. Martin, election commissioner of Boston.

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The League of Pacific Municipalities has installed at its headquarters in Walla Walla, Wash., a reference library and bureau of information for the use of its members. The facilities of Whitman College are also at the service of the league. The secretary is Prof. C. G. Haines of Whitman College.

The Minnesota Municipal League was organized on August 21 at a conference of mayors and other officials of the leading cities in the State. The first convention of the league will be held later in the year.

The twentieth annual convention of the American Society of Municipal Improvements was held in Wilmington, Del., October 7 to 10. There were sessions on sewers, fire preventon, paving, and street traffic, as well as papers on other forms of municipal improvements.

At the second annual conference of the League of Pacific Northwest Municipalities, at Portland, Ore., October 1 and 2, there were addresses and discussions on the following topics: Police administration; a municipal business manager; the development of executive responsibility; fire protection; municipal finance; the defects of commission government; municipal revenue and expenditures; market inspection.

Announcement is made, by the National Municipal League, that for the year 1913–14 the William H. Baldwin Prize will again be offered for the best essay on a subject in municipal government. The subject chosen for the present competition is the following question: "Is the Commission Form of Government a Permanent One?" The prize, which was last year divided into two prizes of $50 each, will be offered for this year as a single award of one hundred dollars. It is open to undergraduate students registered in a regular course in any college or university in the United States offering direct instruction in municipal government. The competition closes on March 15.

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NEWS AND NOTES

Personal and Bibliographical

EDITED BY JESSE S. REEVES[1]

University of Michigan

The annual meeting of the American Political Science Association will be held December 30 to January 2 next at Washington, D. C. The American Association for Labor Legislation also will hold its annual meeting at Washington on December 30 to 31. The program of the Political Science Association as provisionally arranged is as follows: Tuesday, December 30, eight p.m., joint session with the American Association for Labor Legislation, when the presidential addresses will be delivered, for the American Political Science Association by Prof. W. W. Willoughby of the Johns Hopkins University, and for the American Association for Labor Legislation by Prof. W. F. Willoughby of Princeton University. Wednesday, December 31, morning session, the papers will be in the general field of political theory and jurisprudence. In the afternoon, a round table conference upon methods of instruction in American government will be held under the leadership of Prof. C. G. Haines of Whitman College. The evening session will be devoted to a group of papers upon congressional and legislative procedure. Thursday, January 1, at ten a.m., there will be a session upon the work of legislative and municipal bureaus. The subject for consideration at the evening session will be international law and diplomacy. The morning session of January 2 will be devoted to colonial administration. In the afternoon, at the closing session, reports of the standing committees will be made, followed by the annual business meeting of the association.

The annual meeting of the American Historical Association will be held at Charleston and Columbia, S. C., December 29 to 31. It will thus be possible for those who attend these meetings to be present also at the later sessions of the Political Science Association at Washington, D. C.

[1] In the preparation of these notes assistance was received from Prof. W. F. Dodd and Mr. H. E. Yntema.

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Dr. Edwin M. Borchard has resigned his position as librarian of the law library of the Supreme Court of the United States, and has accepted an appointment from the secretary of state as assistant solicitor for the department of state. He will, however, continue to serve the law library as special adviser in comparative law and will supervise the preparation and publication of the Guides to the laws of France and Spain.

Dr. O. C. Hormell, of Bowdoin College, has been promoted from assistant professor of history to professor of history and government.

Mr. John A. Brindley has been made head of the department of economics and political science at Iowa State College.

Mr. Charles F. Abbott has been appointed assistant professor of political science at Middlebury College.

Prof. Josef Redlich of the University of Vienna will visit this country this fall upon the invitation of the Carnegie Foundation for the Advancement of Teaching to visit a number of the law schools and report to them upon some problems of American legal teaching. He will also deliver at the Johns Hopkins University the James Schouler Lectures. The subjects of these lectures will relate to questions of Austro-Hungarian constitutional law and politics. Professor Redlich, as a member of a commission for the promotion of administrative reform in Austria, has recently published a valuable report dealing with the development and present condition of the administration of finances in Austria (*Bericht über die Entwicklung und den gegenwärtigen Stand der österreichischen Finanzverwaltung.* Wien. Hof u. Stattsdruckerei. 1913. Pp. 209).

Prof. Henry Wade Rogers, dean of the Yale University Law School, has been appointed to a federal judgeship.

Prof. Amos S. Hershey of the University of Indiana is absent for a year upon leave, during which time he will make a tour of the world as one of the Kahn Fellows.

Prof. Henry C. Adams of the University of Michigan has sailed for China via the Manchurian railway to be absent at least a year. He will reside at Peking and act as expert adviser to the minister of communications in the establishment of an accounting system for the Chinese railways.

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Carl Ludwig von Bar, professor of jurisprudence at Göttingen and privy counsellor, died August 21 while en route to Oxford to attend the meeting of the Institut de Droit International, of which he was a member. Professor von Bar was the author of many important works both in public and private international law, and was a member of the Hague permanent court of international arbitration. He was in his seventy-eighth year.

The death is announced of Prof. T. M. C. Asser, the distinguished Dutch publicist and writer upon international law. Professor Asser was born in 1838 and was for many years a professor of law at Amsterdam, as well as counsellor to the department of foreign affairs of the Netherlands. He was one of the founders of the Institut de Droit International and a member of the Hague permanent court of international arbitration. In 1911 he received the Nobel peace prize jointly with Alfred Fried of Vienna.

Dr. C. O. Gardner, formerly of the Philadelphia bureau of municipal research, has accepted a position in the department of political science at the University of Cincinnati.

Dr. Blaine F. Moore, formerly of George Washington University, has been appointed to the faculty of the University of Wisconsin.

The lectures on the Barbour Page Foundation at the University of Virginia are to be given this year by President Arthur T. Hadley, of Yale University.

Prof. Paul Shorey of the University of Chicago, Roosevelt Professor for the coming year at Berlin, will lecture there upon the subject of culture and democracy in America.

Émile Ollivier, one of the last prime ministers under Emperor Napoleon III, died August 20, aged eighty-eight. He was the author of the monumental work in sixteen volumes entitled *L'Empire Libéral* (1895-1913). His writings upon the fall of the empire continued to appear in the *Révue des Deux Mondes* until his death. A volume by M. Ollivier, entitled *The Franco-Prussian War and Its Hidden Causes*, translated by Mr. George Burhan Ives, has recently appeared (Boston: Little, Brown and Company).

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Mr. Norman Angell, author of *The Great Illusion* will deliver a series of addresses in the United States during the coming winter and spring under the auspices of the American Association for International Conciliation. He has in press (London—Heinemann) a volume, entitled *The Foundation of International Polity.*

President Arthur T. Hadley of Yale University has been elected to the directorate of the New York, New Haven, and Hartford Railway.

Prof. Chas. A. Tuttle of Wabash College has been called to the chair of economics and social science at Wesleyan University, Middletown, Conn.

Prof. C. H. Van Tyne of the University of Michigan, who is upon leave of absence for the present year, will deliver a series of lectures before the provincial French universities upon the early state constitutions and the continuity of political parties in the United States.

Prof. William D. Guthrie of the Columbia University Law School will deliver a course of lectures upon American constitutional law during the present autumn at the University of Paris.

The Law School of the University of Virginia has begun the publication of the *Virginia Law Review.* It will be conducted by the students of the school, and will contain articles on various phases of law as well as a department devoted to comment on recent cases and court decisions.

At a meeting of the Canadian Political Science Association held in September in Ottawa a permanent organization was effected and the following officers elected for the ensuing year: President, Adam Shortt, Ottawa; first vice-president, Prof. James Mavor, Toronto; second vice-president, Hon. Sydney Fisher, Ottawa; third vice-president, Herbert B. Ames, M.P., Montreal; secretary-treasurer, Prof. O. D. Skelton, of Kingston; executive committee, elected for two years, Dr. Jas. Bonar, of Ottawa; C. Hill-Tout, of Vancouver; Walter C. Murray, of Saskatoon; G. Y. Chown, of Kingston; Hector MacInnes, K.C., of Halifax, and elected for one year, A. H. F. Lefroy, K.C., Toronto; Prof. S. B. Leacock, Montreal; Prof. G. I. H. Lloyd, Toronto; Prof. Montpetit, of Montreal, and John A. Cooper, of Toronto.

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The annual meeting of the American Bar Association, held at Montreal during the first week of September, was distinguished by the presence of Lord Haldane, lord chancellor of England, who delivered an address entitled "Highest Nationality, a Study in Law and Ethics." The presidential address of Mr. F. B. Kellogg dealt with the treaty-making power.

The Institut de Droit International held its annual meeting at Oxford during the first week in August. Its work was largely devoted to the consideration of the draft manual of the laws of maritime warfare. It is expected that the one hundred and twenty articles upon the subject, which were adopted by the Institut, will be submitted to the signatories of the Hague convention prior to the next Hague conference. The manual is comparable in importance to the code of laws for land warfare projected by the Institut in 1880. The new manual recommends the prohibition of the transformation of vessels into ships of war on the high seas in time of war, but it does not go so far as to advocate the complete immunity of all private property at sea from capture. An alternative manual is to be prepared by the Institut, based upon this idea, which has so many advocates in Great Britain and in the United States. Dr. Heinrich Harburger, justice of the court of appeals and professor of international law at Munich, was elected president for the year 1914, and Munich was selected as the place of meeting.

Prof. Raleigh C. Minor of the University of Virginia Law School has recently published a volume entitled, *Notes on Government and States' Rights*, a treatise on the general theories of government, and intended chiefly as an introduction to the study of constitutional law and political science.

By a decree on neutrality in maritime warfare, promulgated October 18, 1912, the government of France has attempted to define exactly the limits of French territorial waters in time of war. A recommendation made by the Institut de Droit International (Paris regulations of 1894) is adopted, extending the limit of her neutral territorial waters to eleven kilometers or about six miles, measured from low water mark.

Martinus Nijhoff of the Hague has just published the first part of an international year book (*Grotius: International Jaarboek*), which will be found particularly valuable in that it contains all of the sentences of

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the Hague court of arbitration from 1902 to the present year. Two editions of the year book have been prepared, one containing the text of the arbitration judgments in French and the other in English.

The twelfth meeting of the International Criminalist Association was held August 28 to 29 at Copenhagen.

The second volume of the new edition of *Cases and Opinions on International Law* by Pitt Cobbett (London: Stevens and Haines, 1913) has recently appeared, the first volume (Part I, Peace) of the new edition having been issued in 1909. The second volume covers the topics of war and neutrality.

The sixth Pugsley prize of one hundred dollars offered through the Lake Mohonk conference on international arbitration to the undergraduate students of any college or university in the United States for the best essay on "International Arbitration" is announced. The contest closes March 15, 1914, and the award will be made at the May meeting of the conference. Further information regarding the competition will be supplied by the secretary of the conference. The conference also announces a first prize of two hundred dollars and a second prize of one hundred, donated by Mrs. Elmer Black, for the best essays on "International Peace" prepared by women students of any college or university in the United States.

It is announced that the New York State Library will resume the publication of the *Review of Legislation and the Index of Legislation*. The *Indexes* for the years 1911 and 1912 it is hoped will be published this fall. At present it is not intended to continue the publication of the *Digests of Governors' Messages*. The publication of the *Digest* and the *Indexes* for the years 1909 and 1910 will be made as soon as the library can obtain the necessary help.

Mr. Hermann H. B. Meyer of the library of congress has prepared two valuable bibliographies, one a selected list of references on commission government for cities, the other a list of references on federal control of corporations (Library of Congress, 1913).

The publication is announced of the *Memoirs of Lord Lyons* in two volumes by Lord Newton (London: Edwin Arnold). This contains

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hitherto unpublished information upon Anglo-American relations during the civil war, during which period Lord Lyons represented Great Britain at Washington.

The Yale University Press announces the forthcoming publication of *Some Questions of Modern Government* by former president William H. Taft, and the *Monroe Doctrine, an Obsolete Shibboleth* by Prof. Hiram Bingham.

In his *Capture at Sea* (London: Methuen and Company, 1913) Lord Loreburn ranges himself with the advocates of the doctrine of immunity of private property at sea from capture during war.

Mr. Norman Bentwich has published (London: Sweet and Maxwell) a volume of cases in international law, entitled *Students' Leading Cases and Statutes on International Law, arranged and edited with notes.* The work has an introduction by Professor Oppenheim.

In connection with the opening of the Carnegie peace palace at the Hague, the University of Leyden conferred honorary degrees upon Senator Elihu Root, Prof. Louis Renault of Paris, Alfred Fried of Vienna, and posthumously on the late Dr. T. M. C. Asser.

The third number of Prof. Fritz Stier-Somlo's *Handbuch des Völkerrechts* is devoted to the subject of international administrative law.

The Carnegie Endowment for International Peace has recently printed a report by its secretary, Dr. James Brown Scott, upon the teaching of international law in the educational institutions of the United States, in which it is recommended that the endowment call a conference of the teachers of international law to consider the present possibilities and steps for the future development of that study.

The important bibliographical work upon Machiavelli by Dr. Adolph Gerber, *Niccolò Machiavelli, Die Handschriften Ausgaben und Ubersetzungen seiner Werke im 16 und 17 Jahrhundert,* the first part of which has been noticed in this REVIEW (VI, 602), has been completed by the publication of the second and third parts, which consist of editions and translations of Machiavelli's works to the year 1700. The completed work is the most thoroughgoing contribution to the bibliography of

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Machiavelli which has ever been made (Gotha: F. A. Perthes, 1912–1913. Pp. 112, 132).

In the volume entitled *The Lawyer in Literature* (Boston: The Boston Book Company. 1913. Pp. 249) Mr. John Marshall Gest has dealt entertainingly with the law and lawyers of Dickens, Scott, and Balzac. There are also chapters dealing with the writings of Coke, the influence of biblical texts upon English law, and the historical method of the study of law as illustrated by the development of the doctrine governing the master's liability for the tort of his servant. An introduction is furnished by Prof. John H. Wigmore.

Prof. Vladimir G. Simkhovitch of Columbia University has published a valuable critique of socialism under the title *Marxism versus Socialism* (New York: Henry Holt and Company. 1913. Pp. 298) in which he shows how far away from Marx's doctrines present day socialistic theories have departed. Among the many recent works on socialism there are few, if any, which give a clearer insight into Marx's doctrines or a better analysis of modern theories as contrasted with them.

The Macmillan Company has added to its low-priced Standard Library, Franklin Pierce's *The Tariff and the Trusts*, and E. T. Devine's *Misery and Its Causes*.

Among the autumn announcements of the Oxford University Press are: *Essays in Legal History*, edited by Professor Vinogradoff; *The King's Council in the Middle Ages*, by J. F. Baldwin; and *The Rise and Fall of the High Commission*, by R. G. Usher.

Die Meistbegünstigungsklausel in den internationalen Handelsverträgen by Ernst Freiher von Teubern (Breslau: J. W. Kerr's Verlag. 1913. Pp. 75) is published as a Beiheft to volume vii of the *Zeitschrift für Völkerrecht und Bundesstaatsrecht*.

Two recent issues of the Columbia University studies in history economics and public law are: *A Political History of the State of New York, 1865–1869*, by H. A. Stebbins; and *Indian Slavery in Colonial Times within the Present Limits of the United States*, by A. W. Lauber.

The annual meeting of the American Society of International Law, held in Washington last April, was devoted to the reading and discussion

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of papers dealing with various aspects of the Panama Canal tolls question. These papers have now appeared in the seventh volume of the *Proceedings* of the society (Washington: B. S. Adams. 1913. Pp. 355).

The sixteenth of the Kingdom Papers prepared and issued by Mr. John S. Ewart, K.C., of Ottawa, is entitled *The Canning Policy, Sometimes Called the Monroe Doctrine.*

Equity for July, 1913, contains an article by C. G. Hoge entitled "Effective Voting," which gives a detailed explanation of preferential voting and porportional representation schemes.

The *Papers and Proceedings of the Royal Society of Tasmania* for 1913 contain two valuable contributions by Mr. E. L. Piesse; the one being a "Bibliography of Porportional Representation in Tasmania," and the other the concluding part of a paper published in the Proceedings of the Society for 1912 dealing with the "The Theory of the Quota in Proportional Representation."

Prof. P. O. Ray of Pennsylvania State College is the author of a work entitled *An Introduction to Political Parties and Practical Politics* (New York: Scribner's Sons. 1913) designed to serve as a text for college classes in politics. The work deals with present day national parties, nominating methods, campaigns and elections—national, state and local—the spoils system, practical politics in legislatures, remedies for legislative evils, and in general with the problems arising out of the modern methods of party organization and operation. A pedagogical apparatus consisting of questions for study and review, and bibliographies, is provided. The volume is a welcome addition to works dealing with practical politics in this country.

The sixth annual meeting of the Minnesota Academy of Social Sciences held last December was devoted to the reading and discussion of papers dealing with the state regulation of prices and wages. These papers and discussions have now been published—*Papers and Proceedings of the Minnesota Academy of Social Sciences* (Minneapolis: Free Press Printing Company. 1913. Pp. 246)—and include a number of addresses of especial value to political scientists. Among these may be mentioned: "Advantages of a State Public Utilities Commission," by B. H. Meyer; "The Advisability of a State Public Utilities Commission for Minne-

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sota," by Stiles P. Jones; "The Wisconsin Industrial Commission," by P. J. Watrous. As an appendix is published the essay entitled "Corrupt Practices Legislation" which was awarded the first prize in the N. W. Harris political science prize contest of 1912. The essay was prepared in the Political Science Seminary of the University of Minnesota.

The July, 1913, issue of the *Proceedings of the Academy of Political Science of New York* is entitled *The Caged Man*, and contains a summary of existing legislation in the Unites States on the treatment of prisoners, prepared by E. Stagg Whitin.

The Bicameral Principle in the New York Legislature, by David Leigh Colvin (New York: 1913. Pp. 191) is the title of a Columbia University doctor's dissertation which contains the results of a careful study of the working relations between the two houses of the New York legislature, during the session of 1910, with particular reference to the value of the bicameral principle. By way of introduction Mr. Colvin discusses the growing scepticism in regard to the value of the double chamber system in our state governments, and calls attention to what he considers a tendency in the direction of the unicameral principle. Then follows a chapter in which he reviews the theories concerning the bicameral system as they have been set forth by the great publicists and political writers. From this he passes from a historical sketch of the bicameral system in New York, a discussion of intercameral relations, the executive and judiciary as checks on bad legislation, and the action of the political parties both in and out of the legislature.

After an examination of the various arguments in favor of the bicameral system in the light of the results of its position in New York he reaches several conclusions, the general tenor of which is that the system does not, by any means, justify everything that is claimed for it. Thus, he says, "after reviewing the work of the legislature and considering the bills which the second chamber checked, it can scarcely be claimed that the second chamber is an effective check on hasty, ill-considered and careless legislation. The bills defeated partake little more of this character than many of the bills passed. The quantity checked was not important, but the quality of the sanction did not show great discrimination. More undesirable bills passed than were killed, and the executive was impelled to kill more bills than both second houses combined."

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The last, the twelfth, edition of W. E. Griffis's standard work on Japan, *The Mikado's Empire* (New York: Harper and Brothers, 1913. 2 vols. Pp. 751), contains eight supplementary chapters which bring the history of the country to the beginning of the year 1912. As is well known, the work gives not only a succinct history of Japan since 660 B.C., but an appreciative account of the life of the Japanese people based upon the personal experiences and observations of the author. As a general treatise, these two volumes are of great value, but they throw no special light upon the working of the parliamentary régime in Japan, nor do the international relations of the country receive more than incidental discussion.

The Canadian Annual Review of Public Affairs for 1912 (Toronto: The Annual Review Publishing Company, 1913. Pp. 700, 90) maintains the high standard of the earlier volumes. The first three chapters deal at length with the naval question, imperial relations, and dominion public affairs. Then follow chapters dealing separately with the public affairs of the several provinces. There are also shorter chapters dealing generally with interprovincial and municipal affairs, transportation, finance, industry, Canadian development and resources, literature and journalism, and foreign relations. An appendix of some ninety pages contains important addresses of the year, and historical data regarding Canadian interests and institutions. An excellent index is provided. To one who wishes to keep informed regarding political, social and industrial progress in the great dominion north of us, the volume is indispensable, and challenges comparison with the year books of other countries. The editor and compiler is J. Castell Hopkins.

In *The Old Law and the New Order* (Boston: Houghton, Mifflin, 1913. Pp. 296) Mr. George W. Alger has collected a number of previously published papers. The papers here republished deal primarily with defects in the administration of justice and the adjustment of constitutional principles to new conditions. Those dealing with the State as employer, and the law and industrial inequality, are of particular interest to students of constitutional law. The author's literary ability makes the more solid discussions of his book interesting and clear, and this is especially important in a work directed primarily to a popular audience, as this seems to be.

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Mr. Frederic R. Coudert has brought together a number of papers, all but two of which have been previously published, in a volume entitled *Certainty and Justice* (New York: Appleton, 1913. Pp. vii, 320). The title was given to the volume by the first paper and does not indicate the scope of the collection. Four of the papers deal with subjects in the field of constitutional law, and the collection as a whole brings together in convenient form the author's scattered contributions to legal literature.

Prof. Roscoe Pound's *Readings on the History and System of the Common Law* (2d ed., Boston Book Company, 1913. Pp. xix, 625) should prove of value as a text book for courses in the elementary principles of English law. No persons would agree as to just what should be included in a volume of this character, but Professor Pound has shown good judgment both in the selection and the arrangement of the materials. Two criticisms suggest themselves, however. The historical selections included in the volume are in large part from antiquated sources, and might better have been replaced by later and more accurate accounts. The chapter on "Sources and Forms of Law" gives too little attention to legislation and to the relation between legislation and judicial decisions.

In his doctor's dissertation, *Die Staatsangehörigkeit in den deutschen Schutzgebieten* (Berlin: 1912. Pp. 85) Rudolf Mallmann discusses the relation of the individual in the German colonies to the empire. The status of imperial citizens and foreigners is treated briefly, though most of the paper is devoted to explaining the nature of the allegiance which the natives owe to the empire. Briefly it may be said that the natives of Kiao-Chow and Samoa and of the German spheres of interest in Africa have the same legal standing, which is in fact very similar to that of the Porto Ricans to the United States.

Prof. Joseph Charmont's *Les transformations du droit civil* (Paris: Armand Colin, 1912. Pp. xvi, 294) traces in a detailed way some of the movements that are broadly outlined by Duguit, to whose work it forms a convenient complement. Especially valuable to American students are Charmont's chapters on the theory of risk with respect to compensation for accidents.

In reading these volumes one is impressed with the important changes which have taken place within recent years in French legal theory and legal institutions. It has been the boast of many English and American

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jurists that the common law is more adaptable to changing conditions than a code could be, yet we find that legal development in France has outdistanced our own.

A portion of the dissertation by Paul Einicke entitled *Rechte und Pflichten der neutralen Mächte im Seekrieg*, published as number 1 of volume x of the *Abhandlungen aus dem Staats, Verwaltungs und Völkerrecht* (edited by Drs. Zorn and Stier Somlo. Tübingen: J. C. B. Mohr. 1912. Pp. 72) appears as a separate monograph under the same title. In this abstract are included: Part i, a historical introduction; part ii, the Hague convention of October, 18, 1907, respecting the rights and duties of neutral powers in maritime war and its history; and that section of chapter ii, part iii, having to do with the equipment of warships in neutral territory. Judging by the character of this much of the work, it would seem that an important and valuable contribution to international law treatises has been made.

Karl Münstermann, in a short doctoral dissertation from Jena, outlines the "*Rechsstellung des Kaisers in der deutschen Schutzgebieten*" (Halle: Kammer and Co. 1911. Pp. 101). He asserts that the connection between the German emperor and the German protectorate is not one merely of international law, but a national relation. He traces the development of the emperor's position up to the passage of the law of April 17, 1886, and from that to the present; dwelling finally on the narrowing of his exercise of power in this sphere—a narrowing formal and material, legal and administrative. In this conclusion he declares that Germany's true aim with regard to her protectorates should not be the old Spanish attitude of colonial conquest, but one of economic development; and adds that it is for the Kaiser, as representative of the empire in its relations with the German protectorates, to embody this attitude.

The Administration of the English Borders during the Reign of Queen Elizabeth, by Charles A. Coulomb, Ph.D. (Publications of the University of Pennsylvania. New York: D. Appleton and Company, agents. 1911. Pp. 136), is a doctoral dissertation which aims to give "a brief account of the more orderly and usual administration of government by the properly constituted civil and military authorities and to outline the various means by which the northern marches of England were protected, as well from domestic violence as from the raids and invasions of the Scotch." The result is a repository of useful information on the

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subject, compiled conscientiously from the sources and accompanied by a fairly full bibliography. Owing, however, to the absence of any illuminative discussion or illustrative incident, the author is over successful dispelling the romantic and picturesque associations with the border which we have been accustomed to cherish.

A. L. C.

Studies in the History of English Commerce in the Tudor Period, by Armond J. Gerson, Ph.D., Ernest V. Vaughn, Ph.D., and Neva Ruth Deardorff, Ph.D. (Publications of the University of Pennsylvania. New York: D. Appleton and Company, agents, 1912. Pp. xi, 344), consists of three doctors' theses, dealing respectively with "The Organization and Early History of the Muscovy Company," "English Trading Expeditions into Asia Minor under the authority of the Muscovy Company" and "English Trade in the Baltic during the Reign of Elizabeth." Prof. E. P. Cheyney contributes a brief but excellent introduction. The first two writers seemed to have been handicapped by the disappearance of most of the records of the early companies, probably lost in the great London fire of 1666. While they have culled valiantly from such fragments of sources as are available they have been forced to quote extensively from Hakluyt, with the result that they have added a spice of literary charm to their work without contributing overmuch new information of consequence. Dr. Gerson however, has succeeded in proving, with apparent conclusiveness, that—contrary to the prevailing opinion—the Muscovy Company was a joint stock rather than a regulated company. Dr. Deardorff has been more fortunate than the other contributors in her gleanings from the sources. Her account of the origin of the Eastland Company is particularly good.

A. L. C.

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LIST OF DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

A list of doctoral dissertations in progress in the field of history has been compiled by Dr. J. Franklin Jameson and appears in the *History Teachers' Magazine* for January 1913. The list of dissertations in political economy for 1913 appeared in the *American Economic Review* for June, 1913. In one or other of these lists may be found most of the dissertions of interest to students of political science, but a number of political science dissertations are included in neither of them. On this account it has been thought well to publish the following list, which had been compiled partly from responses received from the several universities and partly from the published lists of historical and economic dissertations. For the year 1912 a list similar to that given below appeared in the August 1912 number of this REVIEW (vol. vi, 464).

CHICAGO

E. M. Atnos, S.B., Lima College, 1907; A. M. Clark University, 1908. The Policy of the States Toward the Trusts.

Lucia von Luck Becker, Ph. B., Chicago, 1909; Ph. M. 1911. The History of the Admission of New States into the Union.

F. B. Carver, A.B., Nebraska, 1909. History and Critical Examination of the Taxation System of Illinois.

E. F. Colbourn, A.B., Miami, 1907; A.M., Cincinnati 1908. The Republican Party in Ohio, 1854–1865.

J. F. Ebersole, Ph.B., Chicago, 1907; A.M., Harvard, 1909. History of the National Banking System, 1864–1874.

F. B. Garver, A.B., Nebraska, 1909. The Subvention in American State Finance.

C. K. Guild, A.B., University of Manitoba, 1909. Trade Relations Between Canada and the United States.

A. P. James, A.B., Randolph-Macon 1906; A.M., Chicago, 1911. The Constitutional Responsibilities of the Secretary of the Treasury.

Hazel Kyrk, Ph.B., Chicago, 1911. The Development of State Policies of Control in the United States.

J. F. Lee, A.B., Des Moines College, 1904; A.M., State University of Iowa, 1905. Transportation as a Factor in the Development of Illinois before 1860.

D. A. MacGibbon, A.B., McMaster University, 1908. The Canadian Railway Commission and Railway Regulation.

H. A. McGill, A.B., Butler, 1902. The Congressional Caucus.

A. R. Morgan, A.B., California, 1909; A. M. Chicago, 1912. The History of Ecclesiastical Legislation Concerning Divorce, especially in Modern Times.

J. R. Robertson, A.B., Beloit, 1904. The Republican Party in Illinois, 1854–1872.

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A. P. Scott, A.B., Princeton, 1904; B.D., Chicago Theological Seminary, 1910. A Comparative Study of the Criminal Legislation of Massachusetts and Virginia in Colonial Times.

A. W. Taylor, A.B., Doane College, 1902; A.M., Wisconsin, 1910. The Long and Short Haul Clause.

F. J. Tschan, A.B., St. Ignatius College, 1901; A.M., 1904. The North Sea Fisheries in the Middle Ages.

C. Vassardakis, LL.D., National University of Athens, 1910; S.D., University of Geneva. 1908. The Bank of Greece.

E. J. Woodhouse, A.B., Randolph-Macon, 1903; LL.B., Virginia, 1907. The Development of the Judicial System in Virginia before 1860.

A. H. Woodworth, A.B., Lafayette College, 1904; A. M., University of Chicago, 1906. The Sociological Valuation of the Idea of Equality in American Political Theory.

COLUMBIA

N. P. Aghnides, LL.B., Ottoman Law School, Constantinople, 1909. Mohammedan Laws of Taxation.

R. R. Ammarell, A.B., Muhlenberg, 1911; A.M., Columbia, 1912. The Politics of Pennsylvania during the Civil War and Reconstruction.

Frederick Otto Berge, LL.B., University of Nebraska, 1899; B.S., Columbia, 1909; A.M., 1910; LL.B., 1911. Governmental Control of Campaign Funds of Political Parties.

Joseph P. Chamberlain, LL.B., Hastings Law School, 1898. International Law of Rivers.

S. K. Chen, Graduate, Peking University, 1908; A.M., Columbia, 1911. The Chinese Taxation System in the 19th Century.

J. L. Deming, A.B., Cincinnati, 1889; A.M., Bethany, 1900. Immigration to the United States, 1776–1820: A Study in Causes and Effects.

W. E. Dunn, A.B., Texas, 1909; A.M., Leland Stanford 1910. The Office of President in the Spanish-American Republics.

G. W. Edwards, A.B., College of the City of New York, 1911. New York as an Eighteenth-Century Municipality, 1730–1776.

W. M. Feigenbaum, A.B., Columbia, 1907; A.M., 1908. Ratification of the Federal Constitution in New York.

Lucius Arnold Frye, A.B., University of Minnesota, 1907; A.M., 1908; B.C.L. (Oxon.), 1911. History of the State Control of Public Service Corporations in New York.

Miss Floy Victoria Gilmore, LL.B., University of Michigan, 1901; A.B., University of Washington, 1910. Marriage License Regulation.

S. E. Hall, A.B., Vermont, 1907; A.M., Columbia, 1911. The Development in Roman and in English Law of an Implied Warranty of Quality in Goods Sold.

H. H. Holmes, Ph.B., Alabama Normal, 1904. History of the Denominational Control of Education in the United States.

Sydney D. Moore Hudson, Ph.B., Syracuse, 1907. The Power of Congress over Interstate Commerce.

C. L. F. Huth, A.B., Wisconsin, 1904; A.M., 1905. The Right of Asylum.

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Akira Izumi, A.B., Lake Forest College, 1907; A.M., University of Wisconsin, 1908. International Police Power.

Irwin G. Jennings, LL.B., Ohio State University, 1899; A.B. and A.M., Marietta College, 1910. Labor Legislation and the Police Power.

B. B. Kendrick, B.S., Mercer, 1905. The Work of the Joint Committee on Reconstruction, 1866–1867.

E. P. Kilroe, A.B., Columbia, 1904; A.M., 1905, LL.B., 1906. The Origin and Development of the Society of Tammany in the City of New York.

Samuel Simon Laucks, A.B., Ursinus, 1910. The Pennsylvania Legislature: A Study of the Representative System.

Y. C. Ma, A. B., Yale, 1910. Public Finances of Greater New York.

Leonard Jerome Matteson, A.B., Colgate, 1911; A.M., Columbia, 1912. Judicial Control over Legislation in New Jersey.

Lewis Mayers, A.B., College of the City of New York, 1910; A.M., University of Wisconsin, 1912. The New York City School Board. 1913.

Charles Harrison Meyers, A.B., Columbia, 1912. Constitutionality of Workmen's Compensation Acts.

Robert Moses, A.B., Yale, 1909; A.B. (Oxon.) Juris., 1911. The Civil Service of Great Britain. 1913.

J. E. Oster, Litt.B., Ohio Northern University, 1909; LL.B., 1909. The Political and Economic Doctrines of John Marshall.

Charles Pearle, A.M., Columbia, 1913. Judicial Control over Legislation in New York.

A. E. Peterson, A. B., Tufts, 1888; A. M., 1892. New York as an Eighteenth Century Municipality to 1730.

R. R. Powell, A. B., Rochester, 1911. The Development in Roman and in English Law of Remedies against Fraud.

E. R. Russell, Ph.B., Vermont, 1906. Action of the Privy Council on Colonial Legislation.

Birl E. Schulz, A.B., DePauw, 1909; A.M., Columbia, 1911. Justice McLean and the Dred Scott Decision.

J. N. Sokohl, B. S., Teachers College, 1912. State Bureaus of Conciliation and Arbitration.

H. A. Stebbins, Ph.B., Syracuse, 1906; Ph. M., 1907. Party Politics in New York State after 1865.

K. K. Steffensen, A.B., University of Utah, 1911; A.M., Columbia, 1912. The Juristic Effect of a Decision Declaring a Statute Unconstitutional.

CORNELL

E. D. Ross, Ph.B., Syracuse, 1909; Ph. M., 1910. The Liberal Republican Movement.

M. B. Foster, A. B., Carson and Newman, 1910; A.M., 1911. A History of Banking in the State of New York.

C. C. Huntington, B.S., Antioch, 1896; Ph.B., Ohio State 1902; A.M., 1903. A History of Banking and Currency in Ohio Prior to the Civil War.

F. M. Simons, Jr., A.B., Swarthmore College, 1909; A. M., 1912. Interlocking Directorates, Their Effect upon Cost of Service of Common Carriers.

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Daniel Huger Batco, Jr., A.B. and A. M., College of Charleston; A.M., Harvard University. The South Carolina Land System in relation to its Political and Social Institutions.

Arthur Edward Romilly Boak, A.M., Queen's University; A.M., Harvard University. The Magistri of the Roman Republic and Empire.

Harold Hichens Burbank, A.B. and A.M., Dartmouth College. The History of the General Property Tax in Massachusetts since 1775.

Kenneth Wallace Colgrove, A.B. and A.M., University of Iowa. The History of Legislative Instructions in the United States.

Edwin Angell Cottrell, A.B., Swarthmore College. The Government of Newport, Rhode Island.

Charles Claflin Davis, S.B. and LL.B., Harvard University. The Nature of Law.

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Johann Gottfried Ohsol, Candidate of Commercio, Riga Polytechnic Institute (Russia). Political Activities of the American Labor Unions.

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Walter James Shepard, A.B., Harvard University. Ministerial Responsibility. (Completed).

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Carl Stephenson, A.B., and A.M., De Pauw University. The Military Relations of the Boroughs to the Crown in England.

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C. E. Asnis, A.B., Pennsylvania, 1904; LL.B., 1907. Scope and Purpose of the Amendments to the State Constitution of Pennsylvania, with special Reference to the Present Need for Constitutional Revision.

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P. H. Clements, A.B., Indiana, 1911; A.M., 1912. China's Relations with the Powers since 1895.

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BOOK REVIEWS

The Framing of the Constitution of the United States. By MAX FARRAND, Professor of History in Yale University. (New Haven: The Yale University Press. 1913. Pp. vii, 281.)

An Economic Interpretation of the Constitution of the United States. By CHARLES A. BEARD, Assocate Professor of Politics in Columbia University. (New York: The Macmillan Company. 1913. Pp. vii, 330.)

These two volumes, appearing within a few weeks of each other, present a striking contrast. In about two hundred pages of text Dr. Farrand gives a clear, simple, and concise account of the labors of the Federal Convention, of what its members tried to do, and of what they actually accomplished. The book is based on his well-known "Records of the Federal Convention." Probably no one is more familiar with those records than Dr. Farrand, and the present volume presents on the whole the most satisfactory history of the convention that has appeared. While the treatment is in the main conservative, Dr. Farrand does not hesitate to express his own conclusions in a very positive way on certain disputed points, as for example, on the power of the federal courts to annul unconstitutional laws. This question he says "did not come up in connection with the discussion of the jurisdiction of the federal courts. At different times in the sessions of the convention, however, it was proposed to associate the federal judges with the executive in a council of revision or in the exercise of the veto power. At those times it was asserted over and over again, and by such men as Wilson, Madison, Gouverneur Morris, King, Gerry, Mason, and Luther Martin, that the Federal judiciary would declare null and void laws that were inconsistent with the Constitution. In other words, it was generally assumed by the leading men in the convention that this power existed."

Dr. Beard's volume, on the other hand, is a deliberate attempt to upset all our traditional ideas as to the motives and purposes of the men who framed our national government. His work, it is interesting to note, is based on sources not used by Farrand, McLaughlin, Fiske,

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Bancroft, Curtis, and other writers on this period. These new sources are manuscript records of the treasury department containing records of the transactions in government securities at the time that Hamilton's funding system went into effect. Dr. Beard's thesis is best stated in his own words:

"The movement for the Constitution of the United States was originated and carried through principally by four groups of personalty interests which had been adversely affected under the Articles of Confederation: money, public securities, manufactures, and trade and shipping.

"The first firm steps toward the formation of the Constitution were taken by a small and active group of men immediately interested through their personal possessions in the outcome of their labors. . . . .

"The members of the Philadelphia convention which drafted the Constitution were, with a few exceptions, immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system. . . . .

"The Constitution was not created by 'the whole people' as the jurists have said; neither was it created by 'the States' as Southern nullifiers long contended; but it was the work of a consolidated group whose interests knew no state boundaries and were truly national in their scope."

The most interesting chapter in the volume is that dealing with "the economic interests of the members of the convention." This chapter contains a large amount of new material in regard to the private financial history of the public men of that day. Dr. Beard shows that a large number of the members of the convention were holders of government securities the value of which was greatly enhanced by the adoption of the new constitution. This fact is not necessarily sinister in its bearing, for it is evident that any improvement in the government under the Articles of Confederation would have enhanced the value of government bonds. It is also true that the condition of people who owned no government securities was greatly improved by the adoption of the Constitution. Dr. Beard signally fails to prove his main theses, namely, that the leaders in the movement for a stronger government were influenced by their financial interests rather than by the public welfare. The mere fact that large amounts of securities were held by members of the convention needs no further explanation than the reminder that the suffrage was strictly limited at that time, that as a general result only men of means were elected to public assemblies, and that in an age when investments were very limited most men of means not actively

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engaged in industry or commerce put their money in government securities or western lands. The main defect in Dr. Beard's book is that he does not undertake to test his theory by analyzing the votes taken in the convention on specific questions. If his interpretation of history is correct, we should naturally expect to find the larger bondholders voting for a strong central government and the non-bondholders voting against it; but when his theory is applied in detail, we find that such is is not the case. Many of the largest bondholders in the convention were opposed to a strong Federal government, and on the contrary some of the staunchest supporters of the new system held no public securities at all. Let us take, for example, the half dozen men who were recognized as leaders in the movement for a strong central government: Madison held no public securities; Hamilton held only $800; Wilson's holdings, according to Beard, were too trivial to give the figures; Washington, with an estate of considerably over half a million, held only $6246 of United States securities; Gouverneur Morris held none; Charles Pinckney's holdings were $14,000; total $21,046. Take, on the other hand, the men who, according to Farrand "were fearful of establishing a too strongly centralized government and at one time or another were to be found in the opposition to Madison and his supporters." Of these William Patterson, so far as we know, held no public securities; John Dickinson had little property of his own, though his wife was very wealthy; Gerry is known to have held $30,000 of United States bonds, but his holdings must have been much larger, for the loan-office records show that he received in interest in one year $3500; Luther Martin is known to have held $1992.67, and his name also appears on other records where the amount is not given; Ellsworth's personal holdings amounted to $5987.23, and his wife's family, the Wolcotts, were very large holders; William Samuel Johnson was included in Jefferson's list of men "operating in securities," but his holdings were, according to Beard, in the name of his son, who appears to have held $50,000 worth in Connecticut, besides large transactions in New York; total, $87,979.90. These figures are the reverse of what one would expect from the application of the author's theory.

The economic interpretation of history in the broader sense is being accepted generally by the historians of today, certainly by the younger set. For instance, sectionalism in this country was primarily economic, secondarily political. Members of congress and of other political bodies have always been influenced, sometimes consciously, sometimes un-consciously, by the economic interests of their constituents, and in a coun-

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try of such diversified interests as ours we have come to regard it as the duty of a representative to look out for the economic interests of his section; but the tendency of Dr. Beard's economic interpretation is to reduce everything to a sordid basis of personal interest. Gustavus Myers has undertaken to apply the same theory in his *History of the Supreme Court of the United States*. Are we not in danger of reading into the past conceptions which are especially characteristic of the present? The problems that the founders of the government faced were essentially problems of political organization, while the problems that we have to face today are essentially problems of industrial organization. At any rate it will require more convincing evidence than Dr. Beard has so far presented to upset the traditional view that the members of the Federal convention were patriotic men earnestly striving to arrive at the best political solution of the dangers that threatened the republic which was still in the experimental stage.

JOHN H. LATANÉ.

Die moderne Democratie. Eine politische Beschreibung. By WILHELM HASBACH. (Jena: Verlag von Gustav Fischer, 1912. Pp. ix, 620.)

The design of the author of this work is to trace the historical evolution, to portray, compare and pass judgment uopn the different forms of democratic government, and to describe and criticise the various devices which have been employed in the different countries to give the principle of democracy full application. But the term "democracy" is given a meaning which is extremely formal and narrow. In order to be a democracy it is necessary, in the author's view, that a government shall be republican in form. Constitutional monarchies, therefore, even such as Great Britain, do not come within his survey, which is for the most part limited to the governments of France, the United States and Switzerland. It is not the vitalizing spirit, the impelling motive force, the broadly based popular sentiment of democracy that is of interest, but only the forms and mechanism, the effects, failures and achievements of those particular political organizations which bear the outward stamp of democratic-republican States. One looks in vain for any explanation of the political phenomena of modern times in terms of social psychology. No discussion of the nature, elements or effects of public opinion; no appreciation of the "spirit of democracy" is to be found within the covers of this volume. Some attention is devoted to the history of demo-

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cratic ideas but the subject is treated in a rather formal and academic fashion with the evident purpose of merely explaining the historical causes of the democratic movement of the nineteenth century, certainly with no idea of revealing the soul of democracy which lies within and behind the artificial forms of political organization.

After an introductory chapter in which is traced the history of democratic and liberal ideas from the sixteenth to the eighteenth century, the work is divided into three books. The first bears the caption of "The historical evolution of modern democracy," but is practically confined to the three countries above mentioned. The author unquestioningly accepts certain views regarding American history which, to say the least, have very little foundation. He would have it that one of the primary causes of the American Revolution was the desire of the colonists to occupy and settle the region west of the Allegheny mountains, closed to them by the English government. The struggle was brought on, in the author's opinion, by demagogues who had been incited to inaugurate their agitation by France. Such statements, as that "The most of the senators secure their offices through the influence of the bosses. A part of the Senate consists of bosses. Since these are also the wirepullers in the election of Representatives, it results that the Senate possesses the preponderance over the House of Representatives," are manifestly too broad. His view that the state legislatures in the election of United States senators sank to the same position, as presidential electors, of automatic registers of the popular vote, which was in turn controlled by party managers and manipulators, is likewise inaccurate. His characterization of the purchase of Louisiana as "unconstitutional," is certainly unwarranted. His statement that "Only since the presidency of Grant have unworthy members entered the federal courts," is indeed startling.

The second book treats of the forms, conception and nature of modern democracy. The forms are: (1) direct democracy, found in the cantons of Switzerland of the *landesgemeinde* type; (2) representative democracy, of which the separation of powers is an essential characteristic, found in the federal and state governments of the United States, in most of the Latin republics which have taken United States as a model, including Mexico, Argentina and Brazil, and also in the Swiss canton of Freiburg; (3) pseudo-representative democracy, which is the form in which the initiative and referendum have received wide application, and which is of course found in the federal and cantonal governments of Switzerland and recently in some of the States of the American Union; (4) parlia-

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mentary democracy, the predominant features of which are the union of executive and legislative powers and the government by party under the lead of a responsible ministry, found in France, Hayti, Santo Domingo, Venezuela, and Chile. The author's judgment of all these forms of democracy is distinctly unfavorable. "The picture of the democratic state displayed in the foregoing pages will," in the author's opinion, "convince no one who compares it with constitutional monarchy that it is superior. Democracy is the unfree state; constitutional monarchy is the free state. Montesquieu's judgment that by its very nature democracy is not a free form of political organization is as true today as 160 years ago, although it has since that time assumed the ideas of freedom. Its true nature appears even to the inexperienced observer in its legal judgments." A number of chapters are devoted to the civil service, local self-government, the active and passive rights of citizens, popular sovereignty, socialism and social democracy, and finally three chapters on comparison of the Greek democracy with the modern democracy, the democracies of the Hanse cities, Andorra and San Marino, and the Catholic church and democracy.

The last book deals with the mechanism of modern democracy and is divided into chapters on the suffrage and the problems connected therewith, on parties, nominations and campaigns, and on the professional politician.

In so far as the work assembles in convenient form a considerable amount of valuable material on democratic institutions of government it will doubtless serve a useful purpose, but the author will scarcely succeed in his hope of "dispelling the glittering mist which in Germany envelops the form of democracy."

WALTER JAMES SHEPARD.

Le Gouvernement Répresentatif Fédéral dans la République Argentine. By José N. MATIENZO. (Paris: Hachette and Company, 1912. Pp. 336.)

Formerly senator and judge in the province of Buenos Aires, at present professor in the Universities of Buenos Aires and La Plata, the author has enjoyed intimate views from several points of vantage of the political organization of his country. In the present work he has attempted to meet as regards Argentina the wishes of the Pan-American Scientific Congress which in 1908 resolved "to recommend to the universities of the American Republics the practical study of their respective

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political institutions, in comparison with analogous institutions of other countries, in order to deduce the conditions and sociological laws to which are subject the operation and development of the republican form of government." The book is the best exposition of the practical operation of Argentine government that has appeared; for the discussions of Alberdi and Sarmiento are theoretical, bearing to the constitution much the relation of the "Federalist" to that of the United States, and no comparable modern work has appeared with the exception possibly of less comprehensive treatises such as Mejia's *El Federalismo Argentino* (1890), Martinez' *Sistema Politico Argentino* (1891), or Rivarola's recent *Del Regimen Federativo al Unitario.*

A good account is given of the organization of the central government and of the party system; and of the wide divergence between constitutional theory and practice. The fundamental departure from the spirit and letter of the constitution, according to the author, is the absorption of power by the president in derogation of the constitutional rights of the cabinet and of the congress. At the basis of this perverted system is the complete control by the provincial governors of elections in their respective jurisdictions through corruption. The governors, who are theoretically independent of the national authorities, for their part tend to become mere political agents of the president through fear of federal intervention. During intervention, provincial and even local authorities of a province are replaced by national officials; to end intervention, the president may conduct new elections, restore the old authorities, or recognize de facto authorities previously installed by revolution. Sanctioned by the constitution only to the same extent as in the United States, the principle of intervention has been widely extended and frequently applied to coerce governors not amenable to the president's desires, until it amounts to practical legalization of local disorder and even of local revolution. The president and the governors are thus to all intents, the real, the only, electors. This insecurity or denial of political liberty, of constitutional and legal rights and of domestic peace, the author asserts is a passing phase of the life of his nation, due not to the federal form but to the representative principle of organization; and he ascribes this temporary failure of representive government to mere indifference of the people as to their political superiors, leaving the government to an oligarchy recruited chiefly from traditional ruling families, whose members, utterly without principles of public policy, are oblivious to all but personal questions and are held accountable for their political conduct only to the low standards of their own caste.

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In spite of the considerable merits of the book, its deficiencies are such as to justify a wish for a better study of Argentine government. The book sheds no new light in any direction. It is an orderly exposition, not very profound, of facts familiar to all interested in Argentine; and as a simple exposition, it lacks much, both in arrangement and thoroughness. Particularly in view of the comparative purpose for which it was written, it might better have been conceived on the excellent model of Bryce's *American Commonwealth*, since rather than limiting his work to a study of republican government in exact accord with the recommendation of the congress, the author has made a broader study, laying indeed like Bryce, somewhat greater emphasis on the federal than on the representative features.

The opening chapter is especially valueless. It is a long consideration of such superficial points as the number of senators, their tenures, et cetera, in various countries, from which the author derives the conclusion that each federal state differs from others in form and substance—that there is a different federal state (i.e., form or concept) corresponding to each federal state. Unfamiliarity with current philosophy, common among South American writers, is elsewhere betrayed in such expressions as "History is for us the account of the development of a vast organism subject to natural laws" (p. 46), and "Political science must be positive and experimental like the biological sciences" (p. 14).

Too much space is given to historical matter, and the best parts of the book are lacking in fullness. Many topics are entirely omitted that must be considered essential in such a study. There are but brief references to the status of the individual provinces under the existing federal system, to their constitutions or constitutional development, or to the working of their governments. There is not the slightest mention of local, rural or municipal organization. The author describes the judicial system, federal and provincial, at some length, and with discernment ascribes the incapacity of the judges to unconscious obsequiousness to persons of influence, rather than to corruption; but he has not a single word upon the marked impotency of the courts to guard the constitution, although their function of constitutional interpretation is theoretically the same precisely as in the United States. There is not one word upon the organization or administration of the ten national territories, comprising the greater part of Argentine. The practical disfranchisement of the people at the polls is discussed, it is true,

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but no word is said upon the effectiveness of public opinion in controlling the officials, thus imposed upon the country, in matters of public policy apart from elections.

In an appendix a French text of the Argentine constitution is given.

ROBERT T. CRANE.

Control of the Market: A Legal Solution of the Trust Problem. By BRUCE WYMAN. (New York: Moffat, Yard and Company, 1911. Pp. vii, 282).

This book resembles in plan and structure a collection of essays, more or less complete in themselves but grouped about a central idea, rather than a systematic treatise. Its scope is broader than its sub-title; for it deals with problems of modern business and competitive methods that bear only remotely upon the trust question.

Although it discusses difficult legal problems, it is written in non-technical language that places it well within the grasp of the lay reader. The style is crisp and epigrammatic, though there is considerable repetition of idea. The exposition of principles is illustrated throughout by citations from recent decisions of the courts which invest with concrete significance the points made in the text.

The first three chapters deal with state control of industry and competition among individuals. It is the "accepted theory," the author tells us, that every man engaged in business is entitled prima facie to have his custom undisturbed, and that any other person who diverts his trade "commits a legal wrong prima facie"—this, it would appear, without regard to the legality vel non of the method employed. But public policy at the present time also favors freedom of competition; and so such interference can be justified by showing that it necessarily results from the bona fide efforts of the other party to advance his own direct and legitimate interests. It must, however, be "fair" competition. Fraud, inducing breaches of contract, trade libels and the like methods are wrong in themselves and always give rise to liability. But the author lays down as "obviously the current philosophy of the matter" that *any* direct attempt to deprive another of his business is unlawful whatever the means employed, unless justified by a showing that it is for a direct economic advancement of the interfering party.

The author brings but little authority and practically no analytical discussion to bear upon this much disputed question, for he believes

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that the general theory above stated "is now so well accepted that it no longer requires an elaborate defense."

A similar necessity, in Professor Wyman's view, rests upon trade combinations to justify any interference by them in the business of another person, whether the methods be in themselves lawful or not. Here he adopts the radical view that measures admitted to be lawful in themselves and perfectly justifiable when employed in competition by an individual become unlawful when employed by two or more persons in combination.

There is undoubtedly authority for this proposition, although, as Professor Wyman concedes, there are decisions the other way. But whether the proposition that acts otherwise lawful become illegal when performed by two or more persons in combination can be reconciled with sound legal principle, or accepted as the final stage of the law upon the subject, is a grave question, to the solution of which the present book contributes little beyond some clever phrasing of familiar arguments.

The discussion of the trust question begins with the sixth chapter. The result of the cases holding illegal, as being in restraint of trade, the pool, the trust and the holding company, has been the evolution of gigantic corporations which purchase and hold outright the property of former competitors, thus fulfilling the purpose of the earlier schemes. What, therefore, is to be done with these great corporations? Should they be regulated or destroyed? "That, it is submitted, is the trust problem in its latest phrase."

Professor Wyman's solution is regulation through the law of public callings. The modern trust will inevitably take the form of a single corporation with "substantive control of its market." Its possession of this virtual monopoly invests it with a public interest and should subject it to regulation for the public welfare. In support of this thesis Professor Wyman points out that the "common fact" in all types of business heretofore regarded as public callings has been their possession of *virtual monopoly* as a permanent feature. The same power of oppression is in every monopoly, whatever be the conditions producing it. It follows, therefore, that any business with a virtual monopoly "inherent in the nature of things" should be treated as a public calling and regulated accordingly. This policy would protect the community against trust discrimination, extortion and oppression; and especially the predatory tactics employed by the trusts to suppress competition. It would also supply the basis of relief against over-capitalization and

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inflated prices, through the settled principle that a public calling is entitled to no more than a fair return upon its actual investment.

In conclusion, Professor Wyman predicts that "regulation—not destruction—will be shown to be the policy of the 20th century."

J. WALLACE BRYAN.

My Life. By AUGUST BEBEL. (Chicago: University of Chicago Press, 1913. Pp. 343.)

The death of August Bebel at Zürich on August 13 last adds a timely interest to this first installment of his autobiography which brings his life down to the year 1878. To students of the earlier history of the social democratic party the book is certain to become a source of the first importance. It also throws a flood of light—from the point of view of the extreme left, of course—upon the origin of the German Empire and the parliamentary history of its first period.

On the personal side of his life Bebel is extremely reticent. But he does tell enough to make the wonder of his achievement plain. The doubly orphaned child of poverty stricken parents, both of whom died of tuberculosis, himself physically slight and weak, it is remarkable enough that he should have survived a youth of toil and privation. That a man of apparently so little stamina should have lived to become the most effective popular orator of Germany, to accomplish the enormous mass of detail work necessary to the formation of this party, to serve that party term after term in the Reichstag, to go to prison for it repeatedly, and all this while laboring under the necessity of earning an income for himself and family, the story seems little short of the miraculous.

Throughout it is narrated with a *Sachlichkeit* and an almost total absence of personal bitterness, which, considering the provocation involved in some of the events, is almost too saintly. Those who recall the vehemence, the impression of torrential might which Bebel gave on the stump, will look in vain for the orator in these pages. It is evident that there was quite another side to the man. In addition to the fire and passion of the campaigner he possessed abundant patience and sound judgment without which, indeed, he could never have been so adept and successful an artificer of party.

Even as a school-boy, Bebel tells us, he manifested those traits of character which were later to gain him the nickname of "*Gerechtigkeitsmeier.*" And in spite of the extremely troubled nature of his relations with many of the conservative and liberal leaders of his time he is clearly

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at pains to be as just as a partisan could hope to be in his estimates of their characters. One might anticipate that Bismarck, at least, would be dealt with savagely. As a matter of fact the great chancellor is frankly portrayed as an arch type of reaction and force, but there is a minimum of personal feeling in the references to his policies. Possibly the next volume of the autobiography dealing with the period of the exception laws against the socialists will be more severe. In the preface addressed to his English readers, Bebel refers to these laws as having proved utterly ineffectual after remaining in force twelve years, and, further, as *having cost the chancellor his office.* His proof of the latter thesis will be awaited with interest.

Bebel deals far less considerately with von Schweitzer, the one-time dictator of the General Labor Union, than with Bismarck. There are a number of interesting and sympathetic references to Lassalle, Marx, Engels, Most, and, of course, to the elder Liebknecht, who was for so long Bebel's most devoted and able colleague. They did not always agree but they always fought side by side on the great issues of the movement. And one gains an insight into the curious relation to the rising party of the "two oldsters in London,"—Marx and Engels.

The philosophy underlying the attitude of Bebel and his followers toward the war of 1866–67 finds expression in the following striking passage: "My personal opinion is that for a people which is not free; defeat is rather favourable than otherwise to its internal development. Victories result in a Government the reverse of democratic in type, haughty and exacting in quality while reverses force the Government to approach the people and to win its goodwill."

A large part of the present volume is devoted to a detailed account of the great landmarks of the early history of the socialist movement in Germany: Lassalle's Manifesto, the Congresses at Stuttgart, Nuremburg, Barmen-Elberfeld, Eisenach, Dresden, and Gotha. Bebel's conviction that irresistible forces are driving the masses of men into the ranks of social-democracy and his faith in the proximate success of the movement are manifest on every page of his autobiography. One notes the calm confidence of the man that he was right in every party controversy in which he was engaged. What statesman who has been in responsible office for one-tenth the period covered by Bebel's unofficial leadership could take such a position in his memoirs? Decidedly there are compensations in minority party leadership especially if the party enjoys so phenomenal a growth as that of the German social-democracy.

ROBERT C. BROOKS.

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